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Clarence F. Lea, chairman.

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U.S. Congress. House.
Committee on Interstate
and Foreign Commerce.

Natural Gas

Hearings.

NATURAL GAS

HEARING

BEFORE

THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

SEVENTY-FIFTH CONGRESS

FIRST SESSION

ON

H. R. 4008

TO REGULATE THE TRANSPORTATION AND SALE OF NATURAL GAS IN INTERSTATE COMMERCE AND FOR OTHER PURPOSES

MARCH 24 AND 25, 1937

Printed for the use of the
Committee on Interstate and Foreign Commerce

UNITED STATES
GOVERNMENT PRINTING OFFICE
135605 WASHINGTON : 1937

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CONTENTS

NATURAL GAS

WEDNESDAY, MARCH 24, 1937

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met at 10 a. m., Hon. Clarence Lea (chairman) presiding.

The CHAIRMAN. The committee will come to order, please.

We have met this morning for hearings on the gas problem. We have before us H. R. 4008 and also H. R. 5711; but my understanding is that the sponsors of H. R. 5711 are agreeable to having the hearing on H. R. 4008.

We held hearings on the question of natural gas regulation in the last Congress between April 2 and 15, 1936. So it seems to be the desire of the Committee not to take up the subject generally again, but in the first instance to hear from those who have amendments to suggest concerning this problem.

(The bills referred to are as follows:)

[H. R. 4008, 75th Cong, 1st sess.]

A BILL To regulate the transportation and sale of natural gas in interstate commerce, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

NECESSITY FOR REGULATION OF NATURAL-GAS COMPANIES

SECTION 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale of such natural gas for resale to the public, and to natural-gas companies engaged in such transportation or sale, but shall not apply to the local distribution of natural gas or to the facilities use for such distribution or to the production or gathering of natural gas: *Provided*, That nothing in this Act shall be construed to authorize the Commission to fix the rates or charges to the public for the sale of natural gas distributed locally or for the sale of natural gas for industrial use only.

SEC. 2. When used in this Act, unless the context otherwise requires—

(1) "Person" includes an individual or a corporation.

(2) "Corporation" includes any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees of any of the foregoing, but shall not include municipalities as hereinafter defined.

(3) "Municipality" means a city, county, or other political subdivision or agency of a State.

(4) "State" means a State admitted to the United, the District of Columbia, and any organized Territory of the United States.

(5) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale of such gas for resale to the public whether or not such gas is mixed with artificial gas.

(6) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

(7) "State commission" means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality.

(8) "Commission" and "Commissioner" means the Federal Power Commission, and a member thereof, respectively.

EXPORTATION OF IMPORTATION OF NATURAL GAS

SEC. 3. After six months from the date on which this Act takes effect no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.

RATES AND CHARGES; SCHEDULES; SUSPENSION OF NEW RATES

SEC. 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas, subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas, subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage; or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this Act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

FIXING RATES AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR RESTORATION

SEC. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, or State commission, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas.

ASCERTAINMENT OF COST OF PROPERTY

SEC. 6. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

(b) Every natural-gas company upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

EXTENSION OF FACILITIES; ABANDONMENT OF SERVICE

SEC. 7. (a) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if

the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided*, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

(c) No natural-gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural-gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof: *Provided, however*, That a natural-gas company already serving a market may enlarge or extend its facilities for the purpose of supplying increased market demands in the territory in which it operates. Whenever any natural-gas company shall make application for a certificate of convenience and necessity under the provisions of this subsection, the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission.

ACCOUNTS, RECORDS, AND MEMORANDA

SEC. 8. (a) Every natural-gas company shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act: *Provided, however*, That nothing in this Act shall relieve any such natural-gas company from keeping any accounts, memoranda, or records which such natural-gas company may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by such natural-gas companies, and may classify such natural-gas companies and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

(b) The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of natural-gas companies; and it shall be the duty of such natural-gas companies to furnish to the Commission, within such resonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books, records, data, or accounts, except insofar as he may be directed by the Commission or by a court.

(c) The books, accounts, memoranda, and records of any person who controls directly or indirectly a natural-gas company subject to the jurisdiction of the Commission and of any other company controlled by such person, insofar as they relate to transactions with or the business of such natural-gas company, shall be subject to examination on the order of the Commission.

RATES OF DEPRECIATION

SEC. 9. (a) The Commission may, after hearing, require natural-gas companies to carry proper and adequate depreciation and amortization accounts in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may from time to time ascertain and determine, and by order fix, the proper and adequate rates of depreciation and amortization of the several classes of property of each natural-gas company used or useful in the transportation or sale of natural gas in interstate commerce. Each natural-gas company shall conform its depreciation and amortization accounts to the rates so ascertained, determined, and fixed. No natural-gas company subject to the jurisdiction of the Commission shall charge to operating expenses any depreciation or amortization charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation or amortization other than that prescribed therefor by the Commission. No such natural-gas company shall in any case include in any form under its operating or other expenses any depreciation, amortization, or other charge or expenditure included elsewhere as a depreciation or amortization charge or otherwise under its operating or other expenses. Nothing in this section shall limit the power of a State commission to determine in the exercise of its jurisdiction, with respect to any natural-gas company, the percentage rates of depreciation or amortization to be allowed, as to any class of property of such natural-gas company, or the composite depreciation or amortization rate, for the purpose of determining rates or charges.

(b) The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation or amortization rates, shall notify each State commission having jurisdiction with respect to any natural-gas company involved and shall give reasonable opportunity to each such commission to present its views and shall receive and consider such views and recommendations.

PERIODIC AND SPECIAL REPORTS

SEC. 10. (a) Every natural-gas company shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this Act. The Commission may prescribe the manner and form in which such reports shall be made, and require from such natural-gas companies specific answers to all questions upon which the Commission may need information. The Commission may require that such reports shall include among other things, full information as to assets and liabilities, capitalization, investment and reduction thereof, gross receipts, interest due and paid, depreciation, amortization, and other reserves, cost of facilities, cost of mantenance and operation of facilities for the production, transportation, or sale of natural gas, cost of renewal and replacement of such facilities, transportation, delivery, use, and sale of natural gas. The Commission may require any such natural-gas company to make adequate provision for currently determining such costs and other facts. Such reports shall be made under oath unless the Commission otherwise specifies.

(b) It shall be unlawful for any natural-gas company willfully to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, memorandum, record, or account required to be made, filed or kept under this Act or any rule, regulation, or order thereunder.

STATE COMPACTS, REPORTS ON

SEC. 11. (a) In case two or more States propose to the Congress compacts dealing with the conservation, production, transportation, or distribution of natural gas, it shall be the duty of the Commission to assemble pertinent information relative to the matters covered in any such proposed compact, to make public and to report to the Congress information so obtained, together with such recommendations for further legislation as may appear to be appropriate or necessary to carry out the purposes of such proposed compact and to aid in the conservation of natural-gas resources within the United States and in the orderly, equitable, and economic production, transportation, and distribution of natural gas.

(b) It shall be the duty of the Commission to assemble and keep current pertinent information relative to the effect and operation of any compact

between two or more States heretofore or hereafter approved by the Congress, to make such information public, and to report to the Congress, from time to time, the information so obtained, together with such recommendations as may appear to be appropriate or necessary to promote the purposes of such compact.

(c) In carrying out the purposes of this Act, the Commission shall, so far as practicable, avail itself of the services, records, reports, and information of the executive departments and other agencies of the Government, and the President may, from time to time, direct that such services and facilities be made available to the Commission.

OFFICIALS DEALING IN SECURITIES

SEC. 12. It shall be unlawful for any officer or director of any natural-gas company to receive for his own benefit, directly or indirectly, any money or thing of value in respect to the negotiation, hypothecation, or sale by such natural-gas company of any security issued, or to be issued, by such natural-gas company, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends, other than liquidating dividends, of such natural-gas company from any funds properly included in capital account.

COMPLAINTS

SEC. 13. Any State, municipality, or State commission complaining of anything done or omitted to be done by any natural-gas company in contravention of the provisions of this Act may apply to the Commission by petition, which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such natural-gas company, which shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission.

INVESTIGATIONS BY COMMISSION; ATTENDANCE OF WITNESSES; DEPOSITIONS

SEC. 14. (a) The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provision of this Act or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this Act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation to the Congress. The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish in the manner authorized by section 312 of the Federal Power Act, and make available to State commissions, information concerning any such matter.

(b) For the purpose of any investigation or any other proceeding under this Act, any member of the Commission, or any officer designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or at any designated place of hearing. Witnesses summoned by the Commission to appear before it shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(c) In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found or may be doing business. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(d) The testimony of any witness may be taken at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition at any time after the proceeding is at issue. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it at any stage of such proceeding or investigation. Such depositions may be taken before any person authorized to administer oaths not being of counsel or attorney to either of the parties, nor interested in the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided. Such testimony shall be reduced to writing by the person taking deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

(e) If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

(f) Witnesses whose depositions are taken as authorized in this Act, and the person or officer taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(g) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

HEARINGS; RULES OF PROCEDURE

SEC. 15. (a) Hearings under this Act may be held before the Commission, any member or members thereof, or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission, in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality, or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

(b) All hearings, investigations, and proceedings under this Act shall be governed by rules of practice and procedure to be adopted by the Commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation issued under the authority of this Act.

ADMINISTRATIVE POWERS OF COMMISSION; RULES, REGULATIONS, AND ORDERS

SEC. 16. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this Act; and may prescribe the form or forms of

all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

APPOINTMENT OF OFFICERS AND EMPLOYEES

SEC. 17. The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this Act, without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States; and the Commission may, subject to civil-service laws, appoint such other officers and employees as are necessary for carrying out such functions and fix their salaries in accordance with the Classification Act of 1923, as amended.

REHEARINGS; COURT REVIEW OF ORDERS

SEC. 18. (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this Act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.

(b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(c) The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

ENFORCEMENT OF ACT; REGULATIONS AND ORDERS

SEC. 19. (a) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this Act, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States, the Supreme Court of the District of Columbia, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this Act or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the necessary criminal proceedings under this Act.

(b) Upon application of the Commission the district courts of the United Statesc, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this Act or any rule, regulation, or order of the Commission thereunder.

(c) The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interest in investigations made by it, or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

GENERAL PENALTIES

SEC. 20. (a) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this Act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both.

(b) Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this Act, shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding $500 for each and every day during which such offense occurs.

JURISDICTION OF OFFENSES; ENFORCEMENT OF LIABILITIES AND DUTIES

SEC. 21. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this Act or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, or order thereunder. Any criminal proceeding shall be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, or order thereunder may be brought in any such district or in the district wherein the defendant is an inhabitant, and process in such cases may be served wherever the de-

fendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 225 and 347). No costs shall be assessed against the Commission in any judicial proceeding by or against the Commission under this Act.

SEPARABILITY OF PROVISIONS

SEC. 22. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 23. This Act may be cited as the Natural Gas Act.

[H. R. 5711, 75th Cong., 1st sess.]

A BILL To aid the several States in the proper conservation, orderly production, and procurement of natural gas for interstate commerce, and to regulate its transportation, sale, and exchange in interstate commerce in order to insure its fair and equitable distribution and marketing, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Natural Gas of 1937".

DECLARATION OF POLICY AND PURPOSE

SEC. 2. (a) It is hereby declared to be the policy of the Congress, in the public interest and the promotion of the general welfare, to conserve those natural resources of the United States which are in general demand for use, by providing against their waste and for their orderly and economical availability for the longest practicable period.

(b) Natural gas is a national resource of a wasting and fugitive character. It is in general demand as a prime source of power and heat and constitutes bout 75 per centum of all fuel gas consumed throughout the United States. Its wide general distribution throughout the several States is deemed a public necessity, and its proper conservation, orderly production, sale, exchange, transportation, and distribution are hereby recognized and declared to be in the promotion of the general welfare and affected with a high public interest.

Most natural gas is produced at long distances from the consuming markets where it is distributed by public utilities in response to a general demand. It is necessary in order to reach such markets that the natural gas be moved in interstate commerce through pipe lines.

Already about 70 per centum of such pipe-line mileage is dominated by four groups of interests.

The production and use, transportation, sale or exchange, and distribution of natural gas have been, and are being, conducted wastefully, uneconomically, and inequitably by reason of the fact that the separate States alone have been unable effectively to prevent depletion at an excessive rate and to terminate such wasteful, uneconomical, and inequitable practices, all of which are highly detrimental to the public interests.

(c) The exercise of Federal jurisdiction is declared necessary in the public interest to regulate that part of said natural gas and natural-gas pipe-line industry which is not subject to regulation by the several States, and to aid the States in the proper conservation and orderly production of this valuable natural resource.

(d) It is also declared to be an integral part of this policy to prevent monopolization in every branch of the natural-gas industry, except to the extent that a publicly regulated monopoly becomes a necessity in order adequately and efficiently to serve the general public, in which event it is declared to be the policy so to regulate as to avoid the evils and abuses of monopoly.

Therefore, it is the purpose of Congress by this Act to effectuate such declared policy throughout the United States as to natural gas.

DEFINITIONS

SEC. 3. When used in this Act, unless the context otherwise requires—

(1) "Person" includes an individual, partnership, corporation, or joint-stock company.

(2) "Corporation" includes any corporation, joint-stock company, partnership, association, business trust, recognized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees, of any of the foregoing, but shall not include municipalities as hereinafter defined.

(3) "Municipality" means a town, city, county, or other political subdivision of a State.

(4) "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

(5) "Natural gas" means natural gas as it issues from wells or is segregated or recovered in stripping, or by any other method, and shall include such natural gas though mixed with, or modified by, other gas or substance.

(6) "Natural-gas pipe-line company" means a person or corporation engaged in the transmission of natural gas through pipe lines in interstate commerce.

(7) "Natural-gas pipe line" means a main, including its branches, by means of which natural gas is transmitted in whole or in part in interstate commerce, destined in whole or in part for ultimate distribution to industries, the general public, or other consumers, whether or not such line or lines, or portions thereof, are owned or controlled by a single or by several interests.

(8) Natural gas shall be held to be transmitted or transported in interstate commerce if transmitted from a State to any point outside thereof, or between points within the same State but through any point outside thereof, or from or to any place in the United States to or from a foreign country, but only insofar as such transmission takes place within the United States. Every person who so transmits or transports natural gas engages in interstate commerce in natural gas.

(9) "Field gathering line" means a pipe line through which natural gas is transmitted from the well head to the main natural-gas pipe line.

(10) "Low-pressure-distribution lines" or "service lines" mean pipe lines through which natural gas is distributed from the natural-gas pipe line to consumers.

(11) "Commission" means the Federal Power Commission.

(12) "State commission" means the regulatory body of a State or a municipality which has jurisdiction to regulate rates and charges for the sale of natural gas to consumers within such State or municipality, respectively, or which has jurisdiction to regulate the production and sale of natural gas by the producers or gas-land owners.

(13) "Public utility" means any person who engages in the business of producing, transmitting, selling and exchanging, and distributing natural gas for public use.

(14) The verb "control" means to manage or direct in fact, or substantially and purposely to influence the acts or policy, and the noun has a corresponding meaning.

(15) "Depreciation" also includes depletion.

STANDARDS OF APPLICATION AND JURISDICTION

SEC. 4. (1) The standard to be applied in the administration of the provisions of this Act, except in any case where a different standard is expressly provided for, shall be the public interest, convenience, and necessity.

(2) The provisions of this Act shall apply to the procurement of natural gas for the purpose of its transmission through pipe lines and its sale, exchange, transmission, or distribution in interstate commerce; also to all instrumentalities, including contracts and agreements which substantially affect such interstate transportation and sale or exchange of natural gas. This Act shall not apply to the procurement for, or the sale of, natural gas exclusively in intrastate commerce, nor to the procurement, transportation, and distribution of natural gas solely for the use and consumption of the procurer or transmitter of the natural gas, or for use and consumption of his tenant on property owned or controlled by him, and not for resale.

(3) The Commission shall have jurisdiction over all facilities for the procurement of natural gas for its transmission through pipe lines and its sale, or for exchange, or distribution in interstate commerce, and over the transmission of natural gas in pipe lines in interstate commerce and over the sale, or exchange, of natural gas in interstate commerce, and over all facilities connected therewith as parts of a system of natural-gas transmission operated in more than one State.

(4) Every natural-gas pipe line which is a part of a system for transporting in interstate commerce natural gas destined, in whole or in part, for ultimate distribution to and consumption by the general public is hereby declared to be a public utility, and every person engaged in the business of producing, transmitting, distributing, selling, or exchanging natural gas, in whole or in part, for public use is declared to be engaged in the business of conducting a public utility.

(5) Every person who owns, controls, or operates the facilities subject to the jurisdiction of the Commission under this Act, or who makes contracts involving the use of such facilities, shall be subject to the provisions of this Act.

CONSERVATION BY COMPACT AMONG STATES

SEC. 5. (a) It is hereby declared to be the policy of the Congress to encourage agreements or compacts among the several States, made with the consent of Congress, in the interest of the conservation of the natural-gas resources within the United States and for the orderly, equitable, and economical production and handling of natural gas.

(b) It shall be unlawful for any person to engage in commerce among the several States in natural gas produced, bought, sold, exchanged, or transported in violation of any agreement or compact (including any law or lawful regulation contained in or enacted to effectuate such agreement or compact) among any natural-gas-producing States made with the consent of Congress for the conservation of natural gas and its orderly, equitable, and economical production and handling, contrary to the policy, purpose, and provision of this Act.

SEC. 6. In order to inform the Congress as to the advisability of consenting to any such agreement or compact, as provided for in section 5 hereof, it shall be the duty of the Commission to assemble pertinent information touching various matters covered in any proposed agreement or compact and report to the Congress the facts found, together with its conclusions and recommendations as to the legal and economic advisability of granting consent to any such agreement or compact.

SEC. 7. Upon the approval by Congress of any agreement or compact, as provided for in section 5 hereof, the Commission shall assemble and keep current information necessary and advisable for the continuance of the orderly and successful administration of every such agreement or compact; shall supply copies of so much of said information to the several States, parties to such compacts, as may be requested; and shall report and recommend to the several States within each such agreement or compact on all matters of quantity, quotas, rates, and all other matters required in order effectively to carry out the provisions of every such compact. The Commission shall report annually to the Congress the work done in this respect, and its findings and conclusions as to the advisability of the continuance of any existing agreement or compact, and shall present to Congress from time to time its recommendations.

SEC. 8. To enable the Commission to carry out its duties under section 6 and section 7 hereof, the Commission is hereby authorized and empowered to invoke all of the powers granted under its organic Act and all amendments thereto.

REGULATION OF INTERSTATE NATURAL-GAS PIPE LINES

SEC. 9. It shall be the duty of each natural-gas pipe-line company which purchases any natural gas—

(a) If it elects to act as a common carrier, to accept for transportation at a fair and reasonable rate without undue preference or unjust discrimination between shippers or between localities and, as far as its capacity permits, all natural gas tendered in any area or field which it has undertaken to serve: *Provided*, That natural gas under contracts made in good faith prior to the enactment of this Act shall have priority in transportation; or

(b) If it elects to purchase natural gas in any gas field, to buy tenders thereof without undue preference or unjust discrimination and on an equitable basis: *Provided*, That (1) the price at which tendered is not greater than the going field price, after making due allowance for differences in cost of gathering, and (2) the quality is substantially of standard grade in that field: *And provided further*, That contracts made in good faith prior to the enactment of this Act shall have priority, and that reasonable and equitable consideration shall be given in this respect to any gas production by the natural-gas pipe-line company or of any wholly owned affiliate in said field.

Purchase of gas hereunder may include payment on an equitable basis for gas in place which is subject to drainage through any well from which gas is taken up by any pipe-line company or any vendors to it, provided that it is consistent with the State law regarding title to such gas.

SEC. 10. (a) Up to the capacity of its pipe lines and its ability to procure sufficient natural gas, it shall be the duty of every natural-gas pipe-line company which is engaged in interstate transportation of natural gas, unless reasonable cause to the contrary is established in public hearings before the Commission, to furnish natural gas to any city or town applying therefor which is able and willing to make arrangements to extend a service line to any main of any such pipe-line company, and said gas shall be furnished at fair and reasonable rates without unjust discrimination. Applications by such cities and towns for natural gas shall have priority for consideration in order of the dates of the filing of such applications, but the Commission, if it finds a duty to service, shall decide, after public hearings, held after due notice, the order in which applicants shall be served, priority being given to those cities and towns which, by reason of all pertinent considerations, including cost of the service, number of inhabitants, and need of industry served, indicate the maximum public benefit from such service

(b) Any natural-gas pipe-line company engaged in interstate commerce which, without just cause, is delinquent for more than ninety days in complying with a duty found under the determination and order of the Commission as provided in (a) hereof shall be guilty of a separate misdemeanor for each day of such delinquency.

SEC. 11. (a) The Commission shall have power to order such reasonable extensions of service from the transmission lines of any natural-gas pipe-line company, and/or the establishment of physical connection with any connecting service line arranged for by municipal or private distributors for resale or to ultimate consumers as after investigations and hearings it finds are within the ability of such pipe-line company to serve, after giving due weight to existing obligations in good faith entered into, for service by the pipe-line company and upon evidence that such service extensions, if and when made, will be fairly remunerative at such reasonable and fair rates as the Commission shall authorize or determine.

(b) The Commission shall establish regulations providing for the maintenance of accuracy and serviceability of all meters used in the control of operations of, and in the sale of natural gas by, natural-gas pipe-line companies under the jurisdiction of the Commission and shall provide tests for the determination of accuracy of such meters upon complaint or upon its own motion.

(c) The Commission, upon complaint or upon its own motion, shall, from time to time, order such changes and improvements in equipment and operating procedure of natural-gas pipe-line companies under its jurisdiction, as it may determine, after investigation and hearing, are necessary to enhance safety in operation and maintain a proper quality of service within the limits of the capacity of the main pipe line and other major facilities installed by the owners.

The Commission, however, may not order changes, additions, and improvements which tend unduly to increase either the total investment or the capacity of the line in order to take on additional service obligations. The Commission in ordering any improvements, additions, and extensions shall take into consideration the effect thereof upon the operations of the entire line, to the end that a reasonable return upon the total investment and ability to meet all immediate and prospective obligations of service contemplated by the original investment may not be unfairly jeopardized.

RATES AND CHARGES; SCHEDULES; SUSPENSION OF NEW RATES

SEC. 12. (a) All rates and charges made, demanded, or received by any natural-gas pipe-line company for or in connection with the transmission or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas pipe-line company shall, with respect to any service rendered, or to be rendered, in the transmission of natural gas in interstate commerce in natural-gas pipe lines subject to the jurisdiction of the Com-

135605—37—2

mission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Within six months from the date of the approval of this Act each natural-gas pipe-line company which transports natural gas in interstate commerce shall file with the Commission true copies of all of its contracts—

(1) for lease and royalty agreements of gas lands (unless excused by Commission for cause);

(2) for the purchase of natural gas;

(3) for the transportation of natural gas; and

(4) for the sale or delivery of natural gas.

Thereafter each such natural-gas pipe-line company shall file promptly with the Commission true copies of any and all amendments, renewals, or new contracts on the matters heretofore enumerated.

(d) Under such rules and regulations as the Commission may prescribe, every natural-gas pipe-line company shall file with the Commission, within such time and in such form as the Commission may designate, and shall post and keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transmission or sale of natural gas subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(e) Unless the Commission otherwise orders, no change shall be made by any natural-gas pipe-line company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and posting and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

FIXING RATES AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR TRANSMISSION

SEC. 13. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any natural-gas pipe-line company in connection with any service rendered or to be rendered in the transmission or sale of natural gas in mains in interstate commerce, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unreasonable or unjustly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall prescribe the same by order.

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transmission of natural gas, either independently or in cooperation with the State authorities severally concerned.

ASCERTAINMENT OF COST OF PROPERTY

SEC. 14. The Commission may investigate and ascertain the actual legitimate cost of the property and assets of every natural-gas pipe-line company, the fair depreciation thereof, and, when found necessary for rate-making purposes, other facts which bear on the fair value of such property.

ACCOUNTS, RECORDS, AND MEMORANDA

SEC. 15. (a) Every natural-gas pipe-line company shall make, keep, and preserve such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records for such periods as the Commission may by rules and regulations prescribe as necessary or appropriate

for the effective administration of this Act, including accounts, records, and memoranda, regarding the production, purchase, transmission, delivery, or sale of natural gas, the furnishing of service or facilities in connection therewith, and receipts and expenditures with respect to any of the foregoing: *Provided, however,* That nothing in this Act shall relieve any such natural-gas pipe-line company from keeping any accounts, memoranda, or records which such natural-gas pipe-line company may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by such natural-gas pipe-line companies so engaged. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend any entry, charge, or credit pending submission of satisfactory proof in support thereof.

(b) The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of natural-gas pipeline companies; and it shall be the duty of such natural-gas pipe-line companies to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court of competent jurisdiction.

(c) The books, accounts, correspondence, memoranda, and other records of any person who controls directly or indirectly a natural-gas pipe-line company subject to the jurisdiction of the Commission and of any other company controlled by such person, insofar as they relate to transactions with or the business of such natural-gas pipe-line company, shall be subject to examination on the order of the Commission.

RATES OF DEPRECIATION

SEC. 16. (a) The Commission may, after hearing, require natural-gas pipeline companies to carry a proper and adequate depreciation account in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may from time to time ascertain and determine, and by order fix, the proper and adequate rates of depreciation of the several classes of property used or useful in the production or transmission of natural gas of each natural-gas pipe-line company. Each natural-gas pipe-line company shall conform its depreciation accounts to the rates so ascertained, determined, and fixed. The natural-gas pipe-line companies subject to the jurisdiction of the Commission under this Act shall not charge to operating expenses any depreciation charge on classes of property other than those prescribed by the Commission, nor shall they charge with respect to any classes of property a percentage of depreciation or other charge or expenditure that is included elsewhere, whether as a depreciation charge or otherwise under its operating or other expenses. Nothing in this section shall limit the power of a State commission to determine in the exercise of its jurisdiction, with respect to any natural-gas pipe-line company, the percentage rate of depreciation to be allowed, as to any class of property of such natural-gas pipe-line company, or the composite depreciation rate, for the purpose of determining rates or charges, with respect to matters within the jurisdiction of said State commission.

(b) The Commission may, after hearing, determine the adequacy or inadequacy of the gas reserves held by any pipe-line company, or by anyone for it, including its owned or leased properties and royalty contracts, and the Commission may, after hearing, determine the reasonableness or propriety of the inclusion of all delay rentals or other forms of rental or compensation for unoperated lands and leases, in operating expenses, capital, or surplus.

(c) The Commission, before prescribing any rules or requirements as to accounts, records, correspondence, or memoranda, or as to depreciation rates, shall notify each State commission having jurisdiction with respect to any natural-gas pipe-line company involved and shall give reasonable opportunity to each such commission to present its views and shall receive and consider such views and recommendations.

PERIODIC AND SPECIAL REPORTS

SEC. 17. (a) Every natural-gas pipe-line company shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper and effective administration of this Act. The Commission may prescribe the manner and form in which such reports shall be made and may require from such natural-gas pipe-line companies specific answers to all questions concerning which the Commission may need information. The Commission may require that such reports shall include, among other things, full information as to assets and liabilities; capitalization; surplus; net investment; gross receipts; interest, depreciation, and other reserves; cost of facilities, including leases, royalty contracts, and rentals (segregating those for operated and unoperated lands); cost of maintenance and operation of the facilities; cost of renewals and replacements of such facilities; and cost of production, procurement, transmission, delivery, and sale of natural gas. The Commission may require any such natural-gas pipe-line company to make adequate provision for currently determining such costs and other facts. Such reports shall be made under oath unless the Commission otherwise specifies.

(b) The annual reports shall be matters of public record. The Commission, on request, may furnish the facts in any other report to the State commissions.

(c) It shall be unlawful for any natural-gas pipe-line company willfully to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, memorandum, record, or account required to be made, filed, or kept under this Act or any rule, regulations, or order thereunder.

PROHIBITION OF CERTAIN PRACTICES

SEC. 18. (a) It shall be unlawful for any officer or director of any natural-gas pipe-line company to receive for his own benefit, directly or indirectly, any money or thing of value in respect to the negotiation, hypothecation, or sale by such natural-gas pipe-line company of any security issued or to be issued by such natural-gas pipe-line company, or of the sale, purchase, exchange, or construction of real or personal property owned by or to be acquired by such natural-gas pipe-line company; or to receive any commission, fee, or profit in connection with negotiations for contracts or agreements for the purchase or sale of natural gas by or on behalf of such company; or to share in any of the proceeds thereof; or to participate in the making or paying of any dividends of such natural-gas pipe-line company from any funds properly included in capital account, or from any other source than earned income, except as to liquidating dividends.

PROHIBITION OF BANKING CONTROL

SEC. 19. After six months from the date of the taking effect of this Act, it shall be unlawful for any bank, trust company, banking association, or banking firm, in any manner, to control the actions or policies of any natural-gas pipe-line company.

COMPLAINTS

SEC. 20. Any person, State, municipality, or State commission complaining of anything done or omitted to be done by any natural-gas pipe-line company in contravention of the provisions of this Act may apply to the Commission by complaint which shall briefly state the facts, whereupon a copy of the complaint thus made shall be forwarded by the Commission to such natural-gas pipe-line company, which shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such natural-gas pipe-line company shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating such complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

INVESTIGATIONS BY COMMISSION; ATTENDANCE OF WITNESSES; DEPOSITIONS

SEC. 21. (a) The Commission may make an investigation of any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person shall have violated or is about to violate any

provision of this Act or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this Act or in prescribing rules or regulations thereunder or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which this Act relates. The Commission may permit any person to file with it a statement in writing under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish or make available to State commissions information concerning any such subject.

(b) For the purpose of any investigation or any other proceeding under this Act, any member of the Commission may subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry; and any Commissioner or any examiner or officer designated by the Commission may administer oaths and affirmations and receive evidence. Such attendance of witnesses and the production of any such records may be required from any place in the United States and at any designated place of hearing. Witnesses summoned by the Commission to appear before it shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(c) In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Commission or member or examiner or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court is punishable by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found or may be doing business. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(d) The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition at any time after the proceeding is at issue. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any person authorized to administer oaths not being of counsel or attorney to either of the parties, nor interested in the proceeding or investigation. Reasonable notice shall first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and give his deposition, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

(e) If a witness whose testimony may be desired to be taken by deposition shall be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions shall be promptly filed with the Commission.

(f) Witnesses whose depositions are taken as authorized in this Act, and the person or officer taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(g) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or

other records and documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

HEARINGS; RULES AND PROCEDURE

SEC. 22. (a) Hearings under this Act may be held before the Commission, any member or members thereof, or any examiner or officer designated by the Commission, and appropriate records thereof shall be kept. In any proceeding before it, the Commission, in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality, or any representative of interested consumers or security holders, or any competitor of a party to such proceedings, or any other person whose participation in the proceeding may appear to be in the public interest.

(b) All hearings, investigations, and proceedings under this Act shall be governed by rules of practice and procedure adopted by the Commission, and in the conduct thereof the technical rules of evidence need not, in the discretion of the Commission, be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order decision, rule, or regulation issued under the authority of this Act.

ADMINISTRATIVE POWERS OF COMMISSION; RULES, REGULATIONS, AND ORDERS

SEC. 23. The Commission shall have power to perform any and all acts or duties, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this Act and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in such manner as the Commission may prescribe. Orders of the Commission shall be effective on such date and in such manner as the Commission shall prescribe. For the purposes of administering this Act, the Commission, by rules and regulations, may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

REHEARINGS; COURT REVIEW OF ORDERS

SEC. 24. (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this Act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon the filing of such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. If the Commission fails to act upon any application for rehearing within thirty days after its filing, such application may be deemed to have been denied on the thirtieth day. No proceeding to set aside or review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon, as herein provided.

(b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas pipe-line company to which the order relates is located or has its principal place of business, or in the Court of Appeals of the District of Columbia, by filing in such court, within sixty days after the date of the Commission's denial of the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the entire record upon which the order complained of was entered, or such part of such record as may be stipulated between the parties to be sufficient to a determination of the questions sought to be reviewed. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court which was not urged before the Commission in the application for rehearing, unless the court finds the existence of a reasonable ground for failure so to do. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material, and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission thereupon may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by evidence, likewise shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(c) The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

ENFORCEMENT, REGULATIONS, AND ORDERS

SEC. 25. (a) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this Act, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States to enjoin such acts or practices and to enforce compliance with this Act or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or mandatory decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the necessary criminal proceedings under this Act.

(b) Upon application of the Commission the district courts of the United States, or the Supreme Court of the District of Columbia, shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this Act or any rule, regulation, or order of the Commission thereunder.

GENERAL PENALTIES; VENUE

SEC. 26. (a) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this Act required to be done, or willfully and knowingly causes or suffers such omission or failure—unless elsewhere herein specifically provided for—shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

(b) Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this Act, duly published, shall, in addition to any other penalties provided by law, be guilty of a misdemeanor and shall, upon conviction thereof,

be punished by a fine of not exceeding $500 for each and every day during which such offense occurs.

JURISDICTION OF OFFENSES; ENFORCEMENT OF LIABILITIES AND DUTIES

SEC. 27. The district courts of the United States, or the Supreme Court of the District of Columbia, shall have exclusive jurisdiction of violations of this Act or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, or order thereunder. Any criminal prceeding shall be brought in the district wherein any act or transaction constituting the violation occured. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, or order thereunder may be brought in any such district or in the district wherein the defendant is an inhabitant, or is doing business, and process in such cases may be served wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 225 and 347). No costs shall be assessed against the Commission in any judicial proceeding by or against the Commission under this Act.

CONFLICT OF JURISDICTION

SEC. 28. If, with respect to the method of keeping accounts, the filing of reports, or the acquisition of any security, capital assets, or facilities, any person is subject both to a requirement of the Public Utility Act of 1935 or of a rule, regulation, or order thereunder and to a requirement under this Act or of a rule, regulation, or order thereunder, the requirement of the Public Utility Act of 1935 shall apply to such person and such person shall not be subject to the requirement of this Act or of any rule, regulation, or order thereunder with respect to the same subject matter, unless the Securities and Exchange Commission shall have exempted such person from such requirement of the Public Utility Act of 1935; in which event the requirements of this Act shall apply to such person. But where jurisdiction of any person subject to this Act is lodged with the Securities and Exchange Commission, all reports of such person filed with it shall, upon request, be made available by the Securities and Exchange Commission to this Commission, in aid of its administration of this Act.

SEPARABILITY OF PROVISIONS

SEC. 29. If any provision of this Act, or the application of such provision to any person, circumstance, or commerce, shall be held invalid, the remainder of the Act, and the application of such provision to persons, circumstances, or commerce other than those as to which it is held invalid, shall not be affected thereby.

The CHAIRMAN. We will first hear from Mr. Benton.

STATEMENT OF JOHN E. BENTON, GENERAL SOLICITOR OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS, EARLE BUILDING, WASHINGTON, D. C.

Mr. BENTON. My name is John E. Benton. My office is in the Earle Building, this city. I am general solicitor of the National Association of Railroad and Utilities Commisisoners, which in its membership represents the State commissions of all of the States of the country except New York and Delaware. Delaware has no commission.

I desire to present for the record certain amendments requested by the association, which I will do without reading, if I may.

The CHAIRMAN. Very well.

(The amendments referred to are as follows:)

AMENDMENTS TO H. R. 4008 REQUESTED BY THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS

AMENDMENT NO. 1

Amend section 1 (b) to read as follows:

"SEC. 1. (b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale of such natural gas at wholesale for resale [to the public], and to natural gas companies engaged in such transportation or sale, but shall not apply to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas: *Provided*, That nothing in this Act shall be construed to authorize the Commission to fix the rates or charges to the public for the sale of natural gas distributed locally or for the sale of natural gas for industrial use only."

AMENDMENT NO. 2

Amend section 2 (5) to read as follows:

"(5) 'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale of such gas at wholesale for resale [to the public] whether or not such gas is mixed with artificial gas"

AMENDMENT NO 3

Further amend section 2 by adding thereto the following:

"*(9) 'Natural gas' shall be construed to mean either natural gas unmixed, or any mixture of natural gas and artificial gas.*"

AMENDMENT NO. 4

Further amend said bill by inserting after section 16 a new section as follows, renumbering sections 18 to 23 as 19 to 24.

"SEC. [209] *17* (a) The Commission may refer any matter arising in the administration of this [Part] *Act* to a board to be composed of a member or members, as determined by the Commission, from the State or each of the States affected or to be affected by such matter. Any such board shall be vested with the same power and be subject to the same duties and liabilities as in the case of a member of the Commission when designated by the Commission to hold any hearings. The action of such board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The board shall be appointed by the Commission from persons nominated by the State commission of each State affected, or by the Governor of such State if there is no State commission. Each State affected shall be entitled to the same number of representatives on the board unless the nominating power of such State waives such right. The Commission shall have discretion to reject the nominee from any State, but shall thereupon invite a new nomination from that State. The members of a board shall receive such allowances for expenses as the Commission shall provide. The Commission may, when in its discretion sufficient reason exists therefor, revoke any reference to such a board.

"(b) The Commission may confer with any State commission regarding the relationship between rate structures, costs, accounts, charges, practices, classifications, and regulations of public utilities subject to the jurisdiction of such State commission and of the Commission; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this Act to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

"(c) The Commission shall make available to the several State commissions such information and reports as may be of assistance in State regulation of public utilities. Whenever the Commission can do so without prejudice to the efficient and proper conduct of its affairs, it may upon request from a State make available to such State as witnesses any of its trained rate, valuation, or other experts, subject to *such* reimbursement to the Commission by such State of the compensation and traveling expenses of such witnesses *as the Commis-*

sion shall require. All sums collected hereunder shall be credited to the appropriation from which the amounts were expended in carrying out the provisions of this subsection."

NOTE.—In amendments nos. 1, 2, and 3 language which is additional to that now in H. R. 4008 is italicized. Language now in the bill which would be struck out by the amendments is shown by enclosing in black brackets. Amendment no. 4 is a new section not now in H. R. 4008. It is section 209 of the Federal Power Act, without change, except as to words struck out which are shown by enclosing in black brackets, and words added which are italicized.

Mr. BULWINKLE. Have you got extra copies of those with you?

Mr. BENTON. I have some. I do not have enough for every member of the committee. I have two copies. Perhaps they may be passed around.

Mr. Chairman, I would like also to present for the record, if I may, a resolution which was adopted by the National Association of Railroad and Utilities Commissioners at its forty-seventh annual convention, setting forth that it favors legislation of this character. It was prepared and reported by the executive committee of the association which is made up of approximately 25 of the commissioners from the different States who have been longest in service.

(The resolution referred to is as follows:)

A RESOLUTION PREPARED AND REPORTED AT THE FORTY-SEVENTH ANNUAL CONVENTION OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS BY THE EXECUTIVE COMMITTEE OF SAID ASSOCIATION, AND UNANIMOUSLY ADOPTED BY THE ASSOCIATION

Whereas the business of the transmission and sale of gas in interstate commerce at wholesale for resale, under decisions of the Supreme Court of the United States, is not subject to regulation by the States, and in the absence of Federal legislation providing therefor, is left wholly unregulated; and

Whereas jurisdiction to regulate such business should be vested in some tribunal, so that gas supplied to distributing companies in interstate commerce may be obtained at just and reasonable prices; therefore be it

Resolved, That this association favors the enactment by Congress of legislation vesting jurisdiction in some one of the existing Federal regulatory commissions to regulate the service of supplying gas, whether artificial or natural, produced in one State and sold at wholesale to a distributing company in another State, including rates applicable to such service; and

Resolved further, That Congress be asked to limit the jurisdiction granted strictly to gas transmitted and sold at wholesale for resale, and that such legislation be so drawn as in no way to limit or impair the power of the States to regulate intrastate and local service, and the rates applicable thereto; and

Resolved further, That the committee on legislation be directed to present this resolution to the chairman of the appropriate committees of the two Houses of Congress, and to support the passage of such legislation.

Let me say with respect to the amendments which I have presented, that they are four in number. Two of them are designed to make certain the fact that the terms of the bill will apply to mixed gas as well as to natural gas, unmixed.

Another is designed to make certain that the bill will apply to all intercompany sales of natural gas at wholesale, even though the sale be from one company to another company which will resell to another corporation before the gas is finally sold to the public.

The fourth amendment proposed is to incorporate into the bill the so-called cooperative provisions which are now contained in other Federal regulatory acts.

About that amendment, I may say that in 1920 in the Transportation Act, the Congress first incorporated cooperative provisions which

have been very much used between the State commissions and the Interstate Commerce Commission.

Those provisions, somewhat extended, have been incorporated in the Communications Act, the Federal Power Act, and the Motor Carrier Act.

Amendment no. 4 proposes to incorporate in this bill the same language as is in section 209 of the Federal Power Act, with the addition of certain words which have been italicized. Those italicized words have been suggested for incorporation to give to the Federal Power Commission when it allows use of its experts by State commissions some latitude with respect to the matter of requiring the State commissions to pay for their salaries and expenses.

Under the Federal Power Act there has been some use of the cooperative provisions in investigations, where both the State commission and the Federal Commission were interested in the investigation. I know of one case of that character. In that case I understand the experts of the State who were used received commissions or authorizations from the Federal Commission.

I think in that case the State commission was able to pay for them entirely, and did so.

In some other case it might be that the State commission would not be able to pay experts. They might be engaged in work which was of importance to the Federal and the State commissions and the Federal Commission might think that not the whole salary of a Federal expert used but a part of the salary, or perhaps none of the salary, should be paid by the State.

Our thought is that some latitude can be allowed to the Federal Commission in using, in the public interest, the money which the Congress appropriates for the Federal Commission. It is money appropriated to be used to secure for the people of the United States efficient services at reasonable rates, and if it is used for that purpose it will be expended as Congress intended it to be expended; and no more can be expended than Congress has appropriated. I say that with respect to the words which I have italicized.

I made a rather full statement covering the law and the need for legislation of this character at the last session. I understand from what you have said, Mr. Chairman, that the record last year will be referred to. I think, unless there are questions, there is nothing more that I wish to present to the committee at this time.

Mr. MAPES. May I ask if the bill we are now considering, H. R. 4008, is identical with the bill which the subcommittee held hearings on in the last Congress, H. R. 11662?

The CHAIRMAN. Yes; it is the same bill with one substantial difference. The bill before us provides for a certificate of convenience and necessity, but otherwise the bill is almost exactly in the same language. That is the bill that the committee acted upon in the last Congress, and the committee also reported that bill to the House.

Mr. MAPES. In the last Congress?

The CHAIRMAN. Yes. It did not contain the provision which H. R. 4008 contains requiring competing lines to have a certificate of convenience and necessity.

Mr. MAPES. That section is new?

The CHAIRMAN. That is the only substantially new feature in 4008. Thank you, Mr. Benton.

Mr. BENTON. Thank you.
The CHAIRMAN. We will hear Mr. Booth.

STATEMENT OF HARRY R. BOOTH, ACTING COUNSEL FOR THE ILLINOIS COMMERCE COMMISSION, CHICAGO, ILL.

Mr. BOOTH. My name is Harry R. Booth. I am acting counsel for the Illinois Commerce Commission.

I propose very briefly to discuss why the enactment of H. R. 4008 is necessary and vital for the protection of the rate payers in Illinois. I should also like to suggest two or three amendments to the bill and refer to one or two of the broader aspects of the bill under consideration.

Our support of Federal regulation of interstate natural-gas rates does not arise solely from the special problems which the commission has faced in the past 2 or 3 years on account of the transportation of natural gas from outside sources, but because we believe that the Federal Government should regulate those phases of the operations of the utilities which, due to constitutional limitations, are beyond the power of the States. Only then can effective and complete regulation of utilities in the public interest be assured.

The enactment of a law conferring upon the Federal Power Commission authority to deal with interstate natural-gas companies and rates is now of the greatest importance to the consumers of the State of Illinois. Prior to the past few years the regulation of gas rates was essentially a local problem in our State. Gas distributed and consumed was produced within the State except for relatively insignificant quantities purchased from without the State. Today the situation has changed completely. Over 82 percent of the gas now used within the State of Illinois is brought into the State from the Oklahoma and Texas natural-gas fields.

The total gas sales in Illinois in 1934 were $51,329,000 and $54,236,000 in 1935. That is the total sales to ultimate consumers. Nearly $15,000,000 a year is now being paid annually to the Natural Gas Pipe Line Co. of America and the Panhandle Eastern Pipe Line Co., the two principal interstate natural gas utilities which sell gas to Illinois utilities.

I think it might be interesting for me to point out the fact that the interstate movement of natural gas increased in 1934 over 1933 about 19 percent and that the interstate movement of natural gas in the past 2 or 3 years has shown the same or larger increase.

There is a far greater consumption of natural gas in Chicago and in the past 2 or 3 years you have had the opening up of new markets like the Detroit market, thus increasing the movement of natural gas in interstate commerce.

It is my opinion that if Congress does not confer upon the Federal Power Commission the power promptly to control interstate natural gas wholesale rates, the people of Illinois may be compelled to pay, during the next 10 years, from 20 to 35 million dollars in excessive charges to the Natural Gas Pipe Line Co. of America. It is for this reason that prompt and vigorous action upon the part of Congress is necessary.

While I propose to limit my discussion primarily to the reasons why the enactment of H. R. 4008 is necessary and vital to protect the rate payers in Illinois, I should like to comment briefly, first upon some of the broader problems, and then discuss certain amendments which I believe should be incorporated in the bill.

First, it is of interest to note that in 1934 25 States each used a billion cubic feet or more of natural gas for domestic consumption alone. Ten of these used more than 10 billion cubic feet each. The States using the largest amounts of natural gas are Ohio, California, Pennsylvania, Texas, Oklahoma, West Virginia, Illinois, Kansas, New York, and Missouri. In 1935 the total sales of natural gas were 1,068,691,000,000 cubic feet. Less than one-third of the total amount sold, or 306,000,000,000 cubic feet was used for domestic purposes, producing a revenue of $210,842,000, while the total sales produced a revenue of only $358,067,000.

In 1934 the interstate movement of natural gas increased 19.4 percent above 1933 and aggregated 414,183,000 cubic feet, which was equivalent to about 23 percent of the total production. I believe that the interstate movement of natural gas has since increased because of the greater uses of natural gas in large metropolitan areas like Chicago, and the opening up of new markets like Detroit in the past year.

May I now call your attention to a statement in the Summary Report of the Federal Trade Commission to the Senate of the United States, pursuant to Senate Resolution No. 83, in connection with its investigation of holding and operating companies of electric and gas companies. A study by Wilbur M. Baugham of the legal division of the Federal Trade Commission, beginning at page 79 of that volume, entitled "State Regulation of Gas and Electric Utilities Delayed or Defeated by Plea of Interstate Commerce", indicates that from 1889 the efforts of State authorities to regulate natural-gas rates in the interest of the public have either been delayed or defeated as a result of the constitutional limitations upon the power of the States to regulate the interstate operations of these companies. It would seem that in view of the decisions of the United States Supreme Court declaring invalid the efforts of the State commissions to regulate interstate natural-gas rates, Federal action in this field should no longer be delayed. It can hardly be said that the principle enunciated in the *Western Distributing Co.* case, that it is proper to consider the profits of interstate supply companies which are under the same common control as local operating companies, is sufficient to afford adequate protection to the consuming public. Moreover, the application of this principle in the Illinois situation is being strenuously resisted by the Natural Gas Pipe Line Co. of America.

Natural gas is brought to the central and southern sections of the State by the Panhandle Eastern Pipeline Co., which sells the gas to the Panhandle Illinois Pipeline Co. The gas is then sold to several distributing companies. The Chicago area and the northern part of the State are served by the Natural Gas Investment-Texoma interstate group, controlled by the Cities Service, Standard Oil, Peoples Gas, and other interests. The gas is sold to the Chicago District Pipeline Co., an Illinois wholesale pipe-line company, which sells the gas to the three large gas distributing companies in the northern part of the State—the Peoples Gas Light & Coke Co., Public Service Co. of Northern Illinois, and Western United Gas & Electric Co.

The distribution of natural gas in the Chicago area began with the purchase in 1929 by Samuel Insull of a large block of gas acreage

from the Gulf Production Co. through leases in the Texas Panhandle field for $5,000,000. Subsequently, Insull, the Cities Service Co., the Standard Oil Co. of New Jersey, the Columbian Carbon Co., and the Texas Corporation organized the Continental Construction Corporation and the Texoma Natural Gas Co. as production, construction, and transmission companies which were to produce the gas in the Panhandle field and sell the same to the distributing companies serving Chicago and the northern part of Illinois. The Continental Construction Corporation's name was subsequently changed to Natural Gas Pipeline Co. of America, and after a series of transactions Insull's interest was conveyed to the Natural Gas Investment Co., an Illinois corporation whose stock is owned by the Peoples Gas Subsidiary Corporation, and other Illinois companies. The outstanding stock of the Natural Gas Pipeline Co. of America since July 25, 1931, has been owned by the following groups:

	Distribution on July 25, 1931	Distribution on Dec 31, 1931	Present distribution
	Percent	*Percent*	*Percent*
Insull Son & Co., Inc., an Illinois corporation	26.63	0.00	0.00
Cities Service Co., a Delaware corporation	26.63	26.63	26.63
Natural Gas Investment Co., an Illinois corporation	0	26.63	26.63
The Texas Corporation, a Delaware corporation	17.58	17.58	17.58
Standard Oil Co., a New Jersey corporation	26.63	13.31	13.31
Southwestern Development Co., a Colorado corporation	0	13.31	13.31
Columbia Carbon Co., a Delaware corporation	2.53	2.53	2.53

The investment in pipe-line gas acreage and other property of this group has been approximately $65,000,000; on account of retirements it is now about $60,000,000. The capacity of the line is approximately 175,000,000 cubic feet a day. The gross sales have increased from $5,984,000 in 1933 to $9,116,000 in 1934, to $11,433,000 in 1935, to $13,734,000 in 1936. Information which we have received indicates that about 85 to 90 percent of the gross revenues comes from the Chicago area.

The problem of effective regulation of interstate natural-gas rates has become of special concern to us in view of the Commission proceedings and litigation arising from the efforts of the Peoples Gas Light & Coke Co. to obtain a $3,000,000 rate increase. These proceedings began on June 24, 1936, when the company filed its increased schedule of rates.

The company had requested an increase in rates amounting to about 16 percent on its general customers and 50 percent in the minimum bill.

In July the company asked that it be given permission to place its increased rates in effect immediately, pending completion of the Commission proceedings. This request was denied by the commission on August 21. The company then brought suit in the State circuit court and obtained a temporary injunction, which was reversed in the appellate court and which is now on appeal in the State supreme court. The supreme court of our State in February denied the application of the company for a writ of supersedeas which would have restored the injunction granted by the circuit court. Hearings on the right of the company to permanent injunction are now pending before the master in chancery and the Commission is continuing its hearings

to determine whether the company is entitled to any rate increase. A final order must be entered by May 24 of this year by the Commission.

The largest item of operating expenses of the Peoples Co. arises out of its annual payments for natural gas to the Chicago District Pipeline Co., which now approximate $13,000,000 per year. In its effort to determine whether the contracts between the Chicago District Pipeline Co. and the Natural Gas Pipeline Co. of America now place an unfair burden upon the consumers of the Peoples Gas Light & Coke Co., the Commission in November cited the Chicago District Pipeline Co. to show cause why its wholesale rates should not be reduced.

In order that we might determine whether or not Natural Gas Pipeline Co. of America's wholesale rates under which it sells gas to the Chicago District Pipeline Co. or whether its contract places an unfair burden ultimately upon the Chicago consumer, a few weeks ago the Commission entered an order directing this same Natural Gas Pipeline Co. of America to file reports with the Commission showing the income, extent, and property investment in connection with the supply of gas service to the Chicago District Pipeline Co.

The Commission also directed the Natural Gas Pipeline Co. of America to make available for the Commission's examination its books and records dealing with the sales of gas to the Chicago District Pipeline Co.

Now, the Natural Gas Pipeline Co. immediately filed a suit in the Federal court alleging that the effort of the Commission to inquire into the profits which the Natural Gas Pipeline Co. was actually earning under its contract with the Chicago District Pipeline Co. violated various provisions of the Federal and State constitutions, notwithstanding their denial of any obligation to the State of Illinois.

For your information I should like to file as part of the record here a copy of the bill filed by the Natural Gas Pipeline Co. of America, in the Federal court.

You will notice that they have alleged that not only is the Commission regulating interstate commerce in an emergency asking that the Natural Gas Pipeline Co. of America produce its books and records, but it is also violating the due process clause and several other provisions of both the Federal and State Constitutions.

(The document referred to is as follows:)

BILL OF COMPLAINT OF NATURAL GAS PIPELINE CO. OF AMERICA, A CORPORATION

In the District Court of the United States for the Northern District of Illinois, eastern division. *Natural Gas Pipeline Co. of America, a corporation,* v. *James M. Slattery, Andrew Olson, Charles E. Byrne, James D. Marnane, and Harry A. Barr, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Otto Kerner, Attorney General of the State of Illinois.* In equity no. 15562

TO THE HONORABLE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION:

Natural Gas Pipeline Co. of America, plaintiff, brings this, its bill of complaint, against the defendants, James M. Slattery, Andrew Olson, Charles E. Byrne, James D. Marnane, and Harry A. Barr, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Otto Kerner, attorney general for the State of Illinois, and for its cause of action alleges:

1. The plaintiff, Natural Gas Pipeline Co. of America, formerly Continental Construction Corporation, is a corporation organized in 1930 under and existing by virtue of the laws of the State of Delaware, is a citizen and resident of the

State of Delaware, has offices at 19–20 Dover Green, Dover, Del., and at 20 North Wacker Drive, Chicago, Ill., and brings this suit in its own behalf.

2. The defendants, James M. Slattery, Andrew Olson, Charles E. Byrne, James D. Marnane, and Harry A. Barr are the persons who presently constitute the Illinois Commerce Commission, which is an administrative body created by and acting under and pursuant to an act of the General Assembly of the State of Illinois, entitled, "An act concerning public utilities", approved June 23, 1921, and in force July 1, 1921, hereinafter referred to as "public utilities act." Said defendants will hereinafter be referred to collectively as "Illinois Commerce Commission." The defendant, Otto Kerner, is the attorney general of the State of Illinois and is the legal counsel for the Illinois Commerce Commission, charged with the duty of commencing and conducting suits and proceedings to enforce the orders of the commission and the provisions of the public utilities act, and to recover and enforce the fines and penalties imposed by the public utilities act for its violation, or the violation or nonobedience of the orders of the Illinois Commerce Commission. Each of said defendants is a resident and a citizen of the State of Illinois and subject to the jurisdiction of this court.

3. This is a suit of a civil nature, arising under the Constitution and the laws of the United States of America, between citizens of different States, and within the equity jurisdiction of the district court of the United States, and is brought for the purpose of enjoining the enforcement of a certain order of said Illinois Commerce Commission dated March 3, 1937, and the matter in controversy, exclusive of interest and costs, exceeds the sum of $3,000.

4. Plaintiff is engaged in the sale, transportation, and delivery of natural gas from a point or points in the State of Oklahoma to distributors and consumers of natural gas in the States of Kansas, Nebraska, Iowa, and Illinois. Said natural gas is transported from said point or points in the State of Oklahoma to said consumers or distributors of natural gas in the States of Kansas, Nebraska, Iowa, and Illinois by means of a system of pipe lines and pumping stations. Plaintiff's business and commerce is wholly interstate and national in character, and plaintiff is not engaged in intrastate commerce within the State of Illinois. Plaintiff has not qualified to do an intrastate business within the State of Illinois under the terms and provisions of the laws of the State of Illinois, and is not a public utility nor subject to the jurisdiction or control of the Illinois Commerce Commission under said Public Utilities Act.

5. On or about the 25th day of July, A. D. 1931, the plaintiff, then known as Continental Construction Corporation, and Chicago District Pipeline Co., an Illinois corporation, made and executed a certain agreement in writing dated July 25, 1931, for the sale of natural gas to the said Chicago District Pipeline Co., a true copy of which is attached hereto as exhibit A. On or about the 31st day of December, A. D. 1935, the plaintiff and the Chicago District Pipeline Co. made and executed a certain agreement of forebearance, a true copy of which is attached hereto as exhibit B.

6. Chicago District Pipeline Co. is engaged in the sale, transportation, and delivery of natural gas within the State of Illinois, and plaintiff is informed and believes that said Chicago District Pipelne Co. is solely engaged in intrastate commerce within the State of Illinois and is a public utility within the scope and meaning of the Public Utilities Act and is subject to and under the jurisdicion of the Illinois Commerce Commission pursuant to the terms and provisions of the Public Utilities Act.

7. On or about the 17th day of November, A. D. 1936, the Illinois Commerce Commission issued a certain citation against the Chicago District Pipeline Co., a true copy of which is attached hereto as exhibit C, and the Chicago District Pipeline Co. appeared in response to said citation. Thereafter hearings were instituted by said Illinois Commerce Commission on said citation, and on the 3d day of March 1937, and after the Chicago District Pipeline Co. had closed its evidence, completed its proof, and rested its case, an order was entered by said Illinois Commerce Commission in said cause, directing and commanding the plaintiff to file forthwith with said Illinois Commerce Commission, and on or before the 15th day of March, A. D. 1937, a true and accurate report as to the cost of the property of the plaintiff which is used in supplying natural gas to said Chicago District Pipeline Co., and a statement of income and expenses in connection with supplying gas to said Chicago District Pipeline Co., or to report to said Illinois Commerce Commission, in substitution thereof, a true and accurate statement as to the cost of all its property or properties used by it in the business of transporting and selling natural gas, together with a statement as to the income and expenses for such operations, and further

ordering the plaintiff to make available for the examination of said Illinois Commerce Commission, its officers, agents, and employees, all of plaintiff's accounts and records relating to transactions between plaintiff and Chicago District Pipeline Co., including all accounts and records as to joint or general expenses, any portion of which may be applicable to said transactions. A true copy of said order is attached to this bill as exhibit D.

8. Plaintiff is not a party to said citation or to said proceedings against the Chicago District Pipeline Co., and said order of March 3, 1937, was made and entered by Illinois Commerce Commission without notice to plaintiff and without giving the plaintiff an opportunity to be heard.

9. Chicago District Pipeline Co. and the plaintiff are not subject to common control through common-stock ownership, or in any other manner. At all times mentioned herein prior to September 1, 1931, all or substantially all of the outstanding common capital stock of Chicago District Pipeline Co. was owned or held by Insull Son & Co., Inc., an Illinois corporation, and, since September 1, 1931, by Natural Gas Investment Co., an Illinois corporation. The outstanding stock of Natural Gas Pipeline Co. at the times hereinafter mentioned was and is held by the following-named corporations, substantially in the amounts indicated, viz:

	Distribution		
	July 25, 1931	Dec. 31, 1935	Present
	Percent	*Percent*	*Percent*
Insull Son & Co., Inc., an Illinois corporation	26.63		
Cities Service Co., a Delaware corporation	26.63	26.63	26.63
Natural Gas Investment Co., an Illinois Corporation		26.63	26.63
The Texas Corporation, a Delaware corporation	17.58	17.58	17.58
Standard Oil Co., a New Jersey corporation	26.62	13.31	13.31
Southwestern Development Co., a Colorado corporation		13.31	13.31
Columbian Carbon Co., a Delaware corporation	2.53	2.53	2.53

On July 25, 1931, all, or substantially all, of the outstanding capital stock of Insull Son & Co., Inc., was owned or held by Insull Utility Investments, Inc., an Illinois corporation, which was not owned or controlled directly or indirectly by any one or more of the above-listed corporations. Plaintiff is informed and believes that the outstanding capital stock of Natural Gas Investment Co. is held by the following-named corporations, substantially in the amounts indicated:

	Percent
Peoples Gas Subsidiary Corporation, an Illinois corporation	79.54
Commonwealth Subsidiary Corporation, an Illinois corporation	4.28
Public Service Co. of Northern Illinois, an Illinois corporation	16.18

And plaintiff is further informed and believes that all of the outstanding capital stock of Peoples Gas Subsidiary Corporation, an Illinois corporation, is owned by the Peoples Gas Light & Coke Co., an Illinois corporation; and that all of the outstanding capital stock of Commonwealth Subsidiary Corporation, an Illinois corporation, is owned by Commonwealth Edison Co., an Illinois corporation.

10. The affairs of the plaintiff and of Chicago District Pipeline Co. are controlled by their respective boards of directors and officers acting pursuant to their charters and the laws of the States of their incorporation. At the time of the negotiation for and execution of said contract of July 25, 1931, the board of directors of the plaintiff corporation consisted of eight members, and said board has subsequently been enlarged to include nine members, but at all times mentioned herein Natural Gas Investment Co. and Insull Son & Co., Inc., have been represented by not more than two members of said board and neither Natural Gas Investment Co., Insull Son & Co., Inc., nor any other of the corporations named above, have ever controlled or attempted to control said board, and at none of the times mentioned herein was there any common control of the boards of directors of the plaintiff and of Chicago District Pipe-

line Co. Since the date of plaintiff's incorporation, and until February 9, 1937, one of the two members of plaintiff's board of directors representing Natural Gas Investment Co. or Insull Sons & Co., Inc., has been elected vice president of Natural Gas Pipeline Co. of America, but said vice president never exercised any function of said office nor taken any part in the control or management of plaintiff's business or affairs as such officer, and has received no compensation as vice president and, since February 9, 1937, none of the directors representing Natural Gas Investment Co. has been an officer of Natural Gas Pipeline Co. of America.

11. Plaintiff alleges, and the attorneys, agents, and representatives of the Illinois Commerce Commission so state, that said Illinois Commerce Commission proposes, threatens, and intends to regulate, supervise, and control the contracts, rates, and other affairs of the plaintiff, and otherwise exercise jurisdiction and control over the plaintiff, and as preliminary thereto to inquire into the earnings, expenses, and profits of the plaintiff, the value of its properties and investments, and the other business affairs of the plaintiff; that it is the avowed intention of said Illinois Commerce Commission to treat the Chicago District Pipeline Co. and Natural Gas Pipeline Co. of America as affiliated corporations with common-stock ownership, and subject to common control, to regulate the business affairs of said corporations as a single enterprise under the jurisdiction of said Illinois Commerce Commission, to take jurisdiction of and regulate the profits and income of the plaintiff, and to exercise all power, control, and dominion over the plaintiff, which purports to have been granted to said Illinois Commerce Commission by section 8 (a) of said Public Utilities Act referred to in said order.

12. Plaintiff avers that the Illinois Commerce Commission is not authorized nor empowered to inquire into, investigate, or require the disclosure of the earnings, expenses, or profits of the plaintiff, nor the value of its properties or investments, nor any other business or affair of the plaintiff, and further alleges that said Illinois Commerce Commission is not authorized or empowered nor has it authority or jurisdiction to regulate, control, supervise, or interfere with the contracts or other business affairs of the plaintiff, and avers that the Public Utilities Act, and particularly section 8 (a) thereof, has no application to the plaintiff company and that said act is wholly null and void insofar as said act or said section 8 (a) thereof purport to confer upon the commission any jurisdiction or authority over the plaintiff, its officers or agents, or the plaintiff's business, books, records, contracts, or affairs. Plaintiff further states that said Illinois Commerce Commission is not authorized or empowered nor has authority or jurisdiction under said Public Utilities Act, or otherwise, to require the plaintiff to file with said Illinois Commerce Commission a report as to the cost of the property of the plaintiff which is used in supplying natural gas to said Chicago District Pipeline Co., or a statement of the income or expenses of the plaintiff in connection with supplying gas to said Chicago District Pipeline Co., or to report to said Illinois Commerce Commission as to the cost of all or any part of its property or properties used by it in the business of transporting and selling natural gas, or to make or disclose any statement as to its income or expenses from such operations or to require the plaintiff to make available for examination by said Illinois Commerce Commission, or its officers, agents or employees, any of its accounts or records relating to transactions between said Natural Gas Pipeline Co. of America and Chicago District Pipeline Co., either including or excluding accounts and records as to joint or general expense, any portion of which may be applicable to said transactions, as ordered and directed in said order of the Illinois Commerce Commission dated March 3, 1937, and plaintiff avers that said order is wholly null and void.

13. Plaintiff further alleges that said order of March 3, 1937, and section 8 (a) of said Public Utilities Act deprive the plaintiff of property without due process of law and deny to the plaintiff the equal protection of the laws, and subject plaintiff's books, records, papers, and effects to unlawful searches and seizures, and that said order and said section of said Public Utilities Act are in violation of and prohibited by the Constitution of the United States of America and section one of the fourteenth amendment thereof.

14. If the Illinois Commerce Commission is permitted to enforce said order of March 3, 1937, herein complained of, plaintiff will suffer great inconvenience and expense, plaintiff's trade secrets, secret processes, and methods of doing business will be exposed to its competitors, plaintiff's credit will be impaired, and

plaintiff will be hampered and hindered in its commerce and business affairs, and will suffer divers other great and irreparable harm and injury, all to its great injury and irreparable loss and damage; and plaintiff will be deprived of its property and civil rights without due process of law, and denied the equal protection of the law, and its papers and effects will be subject to unreasonable search and seizure in violation of the fourteenth amendment to the Constitution of the United States of America and section 6 of article 2 of the Constitution of the State of Illinois, and plaintiff's interstate commerce will be burdened and obstructed and hampered in violation of the Constitution and the laws of the United States of America.

15. The penalties provided by said Public Utilities Act for violation of or nonobedience of the orders of the Illinois Commerce Commission are so large and so severe as to intimidate the plaintiff, its officers and agents, and to render it impracticable for the plaintiff to risk the imposition of said penalties or to resist said unlawful order except in this honorable court. Unless the Illinois Commerce Commission and the said Otto Kerner are restrained and enjoined as herein prayed, they will proceed with the proposed and threatened inquiry and investigation of the plaintiff's affairs as set out above, and will compel the plaintiff, its officers, agents, and employees to comply with said order of the said Illinois Commerce Commission herein complained of, and enforce the penalties prescribed by the laws of the State of Illinois for violation of or nonobedience to said order, and plaintiff, its officers, agents, and employees will be coerced by the threat of said penalties into compliance with said order, to the great inconvenience, expense, and irreparable loss and damage of the plaintiff.

16. The plaintiff has no adequate and complete remedy at law, and only in a suit in equity and by the final decree and order of injunction of this court can the plaintiff be protected in its property and constitutional rights, and the plaintiff states its willingness and intention and hereby offers to do equity in the premises.

Wherefore, plaintiff prays:

(*a*) That the order of said commission, dated March 3, 1937, and herein described and complained of, be decreed to be in violation of the Constitutions and laws of the United States of America and of the State of Illinois and beyond the scope of the powers of the Illinois Commerce Commission, and to be totally void;

(*b*) That a three-judge court be constituted as provided in section 266 of the judicial code, and that the defendants and each of them and all other persons be temporarily and permanently restrained and enjoined from enforcing said order.

(*c*) That the defendants and each of them, and all other persons, be temporarily and permanently restrained and enjoined by said court from taking any steps or proceedings against the plaintiff, its directors, officers, agents, or employees, to enforce any penalties, or any other remedy for disregarding said order described above;

(*d*) That the Illinois Commerce Commission and the said Otto Kerner and each of them be temporarily and permanently restrained and enjoined by this court from taking any action directly or indirectly to enforce said order of March 3, 1937, in any manner or degree, and that said defendants be temporarily and permanently enjoined and restrained from exercising or attempting to exercise any jurisdiction or control over this plaintiff, its officers, directors, agents, or employees;

(*e*) That the plaintiff have such other and further relief as may be just and equitable in the premises.

May it please your honors to grant unto the plaintiff a writ of subpena of the United States of America, issuing out of and under the seal of this honorable court, directed to said defendants, James M. Slattery, Andrew Olson, Charles E. Byrne, James E. Marname, and Harry A. Barr, the persons presently constituting the Illinois Commerce Commission of the State of Illinois, and Otto Kerner, attorney general of the State of Illinois, commanding them and each of them on a day certain to be named therein, and under a certain penalty, to be and to appear before this honorable court, then and there to answer, but not under oath, answer under oath being expressly waived, all and singular of the premises, and to perform and to abide by such order, direction, or decree as may be made against them in the premises, and that, pending the hearing and determination of the application for a permanent

injunction herein, a temporary restraining order may be issued as above prayed.

And the plaintiff will ever pray.

NATURAL GAS PIPELINE CO. OF AMERICA,
By ———— ————,
Its vice president and general manager.
————,
Attorneys for said Natural Gas Pipeline Co. of America.
———— ————,
———— ————,
———— ————,
Of Counsel for the Plaintiff.

STATE OF ILLINOIS,
County of Cook, ss:

Floyd C. Brown, being first duly sworn, on oath deposes and says that he is the vice president and general manager of the plaintiff herein; that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

———— ————.

Subscribed and sworn to before me this 11th day of March, A. D. 1937.

————,
Notary Public.

Now, I should like to call your attention to some statements which were made before this very committee about a year ago by two men who represent the Natural Gas Pipeline Co. of America and who indicated to this committee that the regulation of interstate natural gas wholesale rates, was not necessary because of the fact that in their opinion the States were adequately able to deal with the situation.

Mr. Gallagher's statement appears beginning with page 139 of the hearings in connection with H. R. 11662. I wish to call your attention to that part of the statement beginning on page 142. Mr. Gallagher failed to mention the fact that he was a director of the Natural Gas Pipeline Co. of America. He stated that when the company first brought natural gas into Chicago that they voluntarily produced all of the information that the commission requested at that time and that for that reason regulation of interstate wholesale rates is not necessary. At page 142 he says they were required to present all of the facts relative to the cost of the natural gas to be delivered to the city gate by the transportation company:

> By that I mean the transportation investment of the pipe line, cost of gas in the field, and the operating cost incident to piping gas from the field to the market.
>
> Now, of course, the pipe-line company might have said, "We won't make these facts available", and they would have been within their legal rights if they had made that statement. For all practical purposes they were brought under the regulatory powers of the Illinois commission because they had some $70,000,000 invested in facilities to bring gas to the Chicago market, which is of no value without a contract with the Chicago market, and that contract could not be made without the approval of the commission. In other words, the commission had control over the rates which were to be paid by consumers of Chicago regardless of the legal situation.

Now, what happened was this: Mr. Gallagher was the representative of the Natural Gas Pipeline Co. of America who was produced as a witness by the Chicago District Pipeline Co., the Illinois wholesale company. Mr. Gallagher presented estimates as to the profits which in the opinion of the Natural Gas Pipeline Co. and his own pipe-line company would be earned by the Natural Gas Pipeline Co.

arising out of the sales of natural gas to the Chicago District Pipeline Co.

That data was presented in 1931 and 1932.

The Natural Gas Pipeline Co. of America was then beginning operations. It was extremely difficult for our commission or any regulatory body to then determine whether or not the estimates made by Mr. Gallagher would in fact turn out to be the actual profits which the Natural Gas Pipeline Co. of American would earn.

When the Peoples Gas Light & Coke Co. asked our commission for this very large increase in its rates, we asked the Chicago District Pipeline Co. to again make available to us the information which would show the profits Natural Gas Pipeline Co. was actually making out of the sales of gas to the Chicago District Pipeline Co. in order that we might check the estimates previously submitted with actual revenue under normal operations.

This request was denied by Natural Gas Pipeline Co. of America.

On March 3, as I have indicated to you, the commission issued an interlocutory order directing the Natural Gas Pipeline Co. of America to submit its books and records and reports showing its profits and of its sales of gas to Chicago District Pipeline Co.

Well, we did not get any information from the Natural Gas Pipeline Co. of America directly and as I have indicated they have gone into the Federal courts and are seeking to enjoin our commission from even obtaining any information from them.

The information which we have obtained—we have obtained certain information from the Securities and Exchange Commission and also information from the Chicago District Pipeline Co.—indicates that the profits of the Natural Gas Pipeline Co. of America were very substantially greater than was originally estimated by Mr. Gallagher would be earned by the Natural Gas Pipeline Co. out of the sales of natural gas to the Chicago District Pipeline Co. and indirectly to the Chicago consumers.

Under those circumstances, it is absolutely vital that the Federal Power Commission be given full and complete authority to deal with the question of interstate wholesale rates.

I would just like now to refer to one or two amendments.

Mr. MAPES. Mr. Chairman——

The CHAIRMAN. Mr. Mapes.

Mr. MAPES. Before you take up your amendments, may I ask you some questions? The Crosser bill proposes to regulate natural gas pipe-line companies engaged in transportation of natural gas as common carriers and the Lea bill to regulate natural gas companies. What is the distinction in the two terms, if any?

Mr. BOOTH. Well, I think—I have not had a full opportunity, or the full opportunity that I feel is necessary, to discuss the Crosser bill in detail. I have given more attention to the Lea bill.

I think the only distinction is this, that there is a legislative declaration in the Crosser bill that natural gas transmission companies are common carriers or public utility companies. In the Lea bill the Commission is given power to regulate the interstate rates of natural gas transmission companies, so that in effect, apparently that substantially the same result is arrived at.

Mr. MAPES. Is any natural gas transported in interstate commerce except through natural gas pipe-line companies, that are acting as

common carriers? Do not some producing companies transport their own gas exclusively that do not act as common carriers?

Mr. BOOTH. I think that under the decisions of the courts, that it is possible to hold that any company which sells at wholesale to one or more distributing companies or other wholesale companies, would be subject to regulation as a public utility, without the legislative direction that such a company is a common carrier or a public utility.

Mr. MAPES. You think that the regulation of pipeline companies would cover the whole field? Is that your theory?

Mr. BOOTH. I think that the Lea bill will confer upon the Federal Power Commission authority to regulate the interstate wholesale rates, wholesale contracts of natural-gas transmission companies, whether they sell to one pipeline company, or one distributing company, or a number of them.

It might be more desirable to make a legislative declaration that all such companies are in fact public utilities.

Mr. MAPES. What I had in mind was whether or not the Crosser bill which appears to be confined to pipeline companies engaged as common carriers would cover the entire field.

Mr. BOOTH. There were one or two questions in my mind, as I read the Crosser bill, as to whether or not the definition of a public utility in there, in subsection 13 of section 3, defining a public utility, means any person who is engaged in the business of producing, transmitting, selling, and exchanging and distributing natural gas for public use—there might be some question under that definition as to whether or not it would cover the sale of natural gas by a company like the Natural Gas Pipeline Co. of America, which merely resells natural gas to other companies or another company, which in turn wholesales that gas, but there seems to be a conflict between subsection 13 of section 3; and subsection 4 of section 4, which is broader in its definitions; but, as I have stated, I have not had an adequate opportunity to study the Crosser bill in detail.

Mr. MAPES. Both the Crosser and the Lea bills propose to give the Commission the power to fix a just and reasonable rate for gas.

What do you consider a just and reasonable rate?

Mr. BOOTH. Well, if you will excuse me, Mr. Mapes, I am merely a lawyer, and the question as to what is a fair and reasonable rate is normally left to experts of a technical character.

You mean what is the fair and reasonable return upon the investment, or do you mean what is a reasonable, fair, and reasonable wholesale rate?

Mr. MAPES. You are the attorney for the Illinois Public Utility Commission.

Mr. BOOTH. That is correct.

Mr. MAPES. The bills provide that the Commission shall have the authority to fix a just and reasonable rate.

Does that mean a 5-percent return upon the investment, or a 10- or a 15-percent return?

Mr. BOOTH. Well, that all depends upon the individual circumstance. It will—the Commission will undoubtedly allow a fair return upon the fair value of the property of the pipeline company or a producing company devoted to public service.

Mr. MAPES. What would you, if you were a member of the Commission, think is a fair return?

Mr. BOOTH. That would depend upon the individual circumstances. It would depend upon the life of the field. It would depend upon current interest rates.

I would say that a fair and reasonable return for natural gas pipe-line companies—is that your question—not distribution companies, but natural gas pipe-line companies, would vary from 5½ to about 7 percent.

Mr. MAPES. Depending somewhat upon the whim of the individual Commissioner?

Mr. BOOTH. Well, that whim ought to be limited to a considered discussion of the facts before it, and I have a great deal of confidence in the judgment of the gentlemen who sit on the Federal Power Commission.

Mr. MAPES. Are there any standards set up to guide the Commission in its fixing what is a just and reasonable rate?

Mr. BOOTH. There is nothing in H. R. 4008, or H. R. 5711 which sets up a definite standard as to what the rates of return should be. In practically all of the statutes that is left up to the judgment and the determination of the administrative body which has jurisdiction over the determination of rates. However, there is an amendment that I am about to suggest for the consideration of this committee, namely, that the Federal Power Commission be given authority to fix temporary rates pending the completion of an investigation which would allow a return of not less than 5 percent upon the original cost, plus working capital of the property.

Now, that bill, that amendment is comparable to the temporary rate provision that is in the New York State statutes and the commission, the New York Commission, notwithstanding the minimum provision of 5 percent interest has been allowing 6 percent in its temporary rate orders.

Mr. MAPES. What is the practice of your Commission in the fixing of rates? How much of a return is allowed on the investment?

Mr. BOOTH. Well, the Commission has allowed, I would say, 6 to 7 percent in many cases where rates are compromises and no definite finding of a rate of return is made.

Witnesses who have appeared before the commission on behalf of the commission have testified that a fair rate of return for the Peoples Gas Light & Coke Co. is 5¾ percent and the company experts have asked 7 and 7½ percent.

Mr. MAPES. Is it possible to fix standards in the legislation?

Mr. BOOTH. I beg your pardon.

Mr. MAPES. Is it possible to fix a standard in the law? Does the Illinois statute fix any standard to guide the Illinois Commission in arriving at just and reasonable rates?

Mr. BOOTH. No; there is nothing in the Illinois statute which directs the commission to fix any definite rate of return for any public-utility companies. There have been standards laid down by the courts which have stated that a number of factors are to be taken into consideration: The cost of attracting new capital; current rates of interest; the earnings of comparable enterprises, and a number of other factors; but I doubt the desirability of fixing any definite percentage as to what shall be allowed to all companies subject to the Federal Power Commission. I do believe that this amendment, which would have the effect of authorizing the Federal

Power Commission to fix temporary rates pending the completion of investigation, because of the time that is involved in determining a final rate, that a minimum standard, minimum rate of return, should be included in the law just as it is included in the New York law, though it is true that in some temporary rate statutes in other States no definite or minimum rate of return has been included even for the fixing of temporary rates.

Mr. MAPES. Is there any difference in the factors laid down by the Illinois courts, from those fixed by the Federal courts?

Mr. BOOTH. No; I think not. The State courts have in a few cases in which rate cases have been presented to them, followed the principles laid down by the United States Supreme Court.

Mr. COLE. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Cole.

Mr. COLE. Your amendment, as proposed to this bill, provides for a temporary rate which is pretty much of a guessing proposition, is it not?

Mr. BOOTH. Oh, no; not at all.

Mr. COLE. Why not?

Mr. BOOTH. As a matter of fact, it is much less of a guessing proposition than the determination of the final rate case as laid down by the decisions of the courts, because that amendment suggests that a temporary rate be fixed upon the original cost less accrued depreciation of the physical property of said company used and usable in the gas service plus a reasonable amount for working capital, and if the duly verified reports of said company to the Commission do not show the original cost, less accrued depreciation, of said property.

The provision which I am suggesting for the consideration of this committee would fix temporary rates on the basis of original cost, less accrued depreciation, plus working capital.

Now, let us take the case of the Natural Gas Pipeline Co. of America, for illustration. That is probably one of the best illustrations from my point of view, in that the property of that company has been built in a comparatively recent period. Their line was constructed in 1929–31. The books and records of that company should show definitely the money that has been spent by the Natural Gas Pipeline Co. for its properties and facilities. There is no guesswork about that.

Now, the determination of accrued depreciation which must be determined in every rate proceeding, unless the annual depreciation expense is fixed on and allowed on a sinking fund basis, is dependent upon the consideration of the judgment of engineers and accountants as to what is the accrued depreciation of the property; but the fixing of the tentative rate base, which is to be determined on the basis of the original cost, eliminates the guesswork that is usually involved in determination of fair value based upon reproduction cost basis and that is a determination arrived at from the testimony and estimates of engineers. Our courts have held that in the determination of fair value, original cost and reproduction cost is to be considered in arriving at the fair value of the property of the utility company. The New York Court of Appeals has recently sustained the temporary rate provision just referred to.

Now, original cost can be determined with some degree of accuracy, especially in the case of those companies whose properties have been built during the past 15 or 20 years.

The determination of reproduction cost as to what it would cost to reproduce the property of the utility company or pipe-line company, or of another company, is dependent upon the guess or estimate of an engineer based upon hypothetical conditions which never exist.

Mr. COLE. Well, following the formula laid down in your amendment, would the Commission have before it practically all information, legally required, in a rate case, before the final rate would be established?

In other words, as I interpret your amendment, you want this committee to recommend in this bill a temporary rate set-up which the Commission would, in determining, leave out of consideration, some very important elements in the rate structure, necessary as the courts have laid down, in making up a proper and legal rate base.

Mr. BOOTH. I am suggesting this, that because of the time and the delay which usually occur in determination of a final rate that the Commission arrive at a tentative or temporary rate base by taking one of the factors which the courts have said must be considered, in determining fair value, namely, the original cost, and since the original cost can be determined and should be determined with a high degree of accuracy, and since it will give the utility company or the company that is being regulated, presumably, a return upon the money that actually has been expended in the construction of its property and facilities, there does not seem to me anything highly unfair about that.

Now, it is true that when the Commission determines the final rate, it will then give consideration both to the original cost, less depreciation, and the reproduction cost, less depreciation, and arrive at the final rate base.

Mr. COLE. Yes; and those elements which you say the Commission would consider in establishing a final rate, as I understand the law, are required to be taken into consideration.

Mr. BOOTH. That is right.

Mr. COLE. You cannot establish a rate solely on original cost.

Mr. BOOTH. The New York courts and the Supreme Court of the United States in the *Los Angeles case* have held that in determination of a final rate base that a rate base predicated upon substantially original cost does not violate the rules. Commissioner Seavy can tell you about the *California case*.

Mr. COLE. If that is all that is necessary, why put the rest in here?

Mr. BOOTH. I am afraid that I have not made myself clear, Mr. Cole. I said that in the determination of a temporary rate, the time in which it is necessary to make a full and complete investigation is not available and that the Commission should use one of the two elements, namely, the original cost, and since the original cost can be determined, it should be determined, since it can be determined with a high degree of accuracy, since it will return to the company, or since it will allow the company a return upon the money that actually has been invested in the properties.

Mr. COLE. I think that I understand your position. Let me ask you another question dealing with this subject.

Mr. BOOTH. Yes, sir.

Mr. COLE. Take the Illinois situation, for instance. Was the original contract between the distributing company and the interstate company approved by the Illinois commission?

Mr. BOOTH. Well, the proceedings before the Illinois commission were of a very detailed character. The contract between the Natural Gas Pipeline Co. of America and the Chicago District Pipeline Co., the interstate contract, was never submitted for the approval of the commission. It was submitted in evidence when the Chicago District Pipeline Co. requested that the commission approve the Chicago District Pipeline contract with the Peoples Gas Light & Coke Co. and two other distributing companies. The commission considered the estimates of Mr. Gallagher as to the profits which the Natural Gas Pipeline Co. would earn over the life of the 15-year contract in determining whether or not the contract between the Chicago District Pipeline Co. and the Peoples Gas Light & Coke Co. should be approved. It rejected that contract. That case went into the courts and a settlement was reached which was satisfactory in a sense to the commission and the Chicago District Pipeline Co. was allowed to file a schedule of rates.

The contract between the Chicago District Pipeline Co. and the Peoples Gas Light & Coke Co. was not approved. It was allowed to file a schedule of rates, but the commission in its order which was entered about a year and a quarter ago said that the commission still reserved the right to inquire into the reasonableness of the payments at any time and in an appropriate proceeding.

That is what we are endeavoring to do now—to inquire into the reasonableness of the rate, among other matters, of the Chicago District Pipeline Co. under which it sells gas to the Peoples Gas Light & Coke Co.

Mr. COLE. Where such contracts are approved either directly or indirectly is it generally the practice of the interstate company to resist any effort to change the prices set forth in that contract?

Mr. BOOTH. Yes. They seem to be resisting even the effort of the commission to determine how much money they are making today, so that the commission, even though it is not regulating the interstate wholesale rates under which the Natural Gas Pipeline Co. of America sells to the Chicago District Pipeline Co., but it wants to determine whether or not the Chicago District Pipeline Co.'s operating expenses are reasonable. The Chicago District Co.'s principal operating expense—and I am afraid I did not make this point clear, and I want to just clear that up—the commission in the *Chicago District Pipeline case* is confronted with the fact that its principal operating expense, over 95 percent of its operating expense, is the payments which it makes to the Natural Gas Pipeline Co. of America. It has indicated that it wants to see how much money the Natural Gas Pipeline Co. of America is now making out of the sale of gas to the Chicago District Pipeline Co., so that it can determine whether or not the operating expenses of the Chicago District Pipeline Co. are reasonable. If they are not reasonable, it may then—I do not know what it will do. If its position is sustained, it may then be in a position to reject part of the operating expenses of the Chicago District Pipeline Co. under the *Western Distributing Co. case* and order the Chicago District Pipeline Co. to file a new schedule of rates under which it sells gas to the Peoples Gas Light & Coke Co.; but it does

not have the power to determine what the Natural Gas Pipeline Co. of America shall collect from the Chicago District Pipeline Co., and this bill presumably would confer upon the Federal Power Commission such authority.

Mr. PETTENGILL. It is not clear to me what you mean by the wholesale interstate rate. Is that a tariff charge by a company that is engaged in the business of a common carrier, or does it apply to a company that is transporting and selling its own gas?

Mr. BOOTH. It does not make any difference.

Mr. PETTENGILL. It does not?

Mr. BOOTH. The wholesale rate which is covered by the act would cover, as I understand it, any wholesale rate or charge under which either a transmission company or a producing and transmission company sells natural gas and which transmits it in interstate commerce to either a distributing company or to another wholesale company.

Mr. PETTENGILL. I see. The point in my mind is, where is the constitutional authority of Congress—unless we get 6 or 60 more judges——

Mr. MAPES. Sixty more?

Mr. PETTENGILL. To fix a rate at which a company should sell its own commodity?

Mr. BOOTH. Well, I believe that that constitutional——

Mr. PETTENGILL. Is that clear?

Mr. BOOTH (continuing). Power has been sustained. If you will examine the very excellent memorandum that was filed before the subcommittee in 1936 prepared by Mr. De Vane and Mr. Tingley, of the Federal Power Commission, I think that they have adequately handled the question of the constitutional power of an agency designated by the Congress to regulate rates.

You regulate rates of railroads. There is not any substantial difference.

Mr. PETTENGILL. That is just the whole distinction that I am making. Railroads are carriers of other people's goods, but I am talking now about a pipe-line company and the gas that is moving through the pipes is the property of the same company that owns the pipes. Now, what authority has the Federal Government to tell that person how much he may charge for his commodity at the selling end of the line?

Mr. BOOTH. Well, I would rather——

Mr. PETTENGILL. Perhaps it has been fully answered by the Supreme Court. I do not know.

Mr. BOOTH. I believe it has been. I believe there is no question about it.

Mr. PETTENGILL. You think that there is no question but that power would lie in the Federal Power Commission in the same way in which it would have the power to regulate the interstate wholesale rates under which one electric company sells electric energy to a other?

Mr. BOOTH. I do not think there is the slightest doubt about it and Mr. De Vane's memorandum, I think, covers it.

Mr. PETTENGILL. You think that a farmer who grows peaches in southern Michigan and hauls them down into the Indiana market——

Mr. BOOTH (interposing). There is a very substantial difference between the hauling of peaches and the sale of a commodity like gas. These companies are supplying gas service and are rendering a service that is dedicated to the public under common law, to public use, and the right of the Government, State or Federal, under appropriate circumstances to regulate the prices under which a company that is devoted to public service like a gas company, or an electric company, or a railroad company, is unquestioned.

Mr. PETTENGILL. Well, of course, I thoroughly agree that the gas business is a utility in the State in which it is selling, but I am not yet clear as to whether Uncle Sam has the right to fix the rate of a company that is moving its own gas. That is what I would like to have answered.

Mr. BOOTH. I believe there are decisions that hold that wholesale public utilities—that is, wholesale companies—are public utilities subject to regulation.

Mr. PETTENGILL. I thought that in considering the motor truck and bus bill a year ago we decided that we did not have any authority to regulate trucks owned by companies that were moving their own goods in those trucks, except with respect to danger, speed on the highway, and things like that.

Mr. BOOTH. I think that is probably true.

Mr. HALLECK. Mr. Chairman——

The CHAIRMAN. Mr. Halleck.

Mr. HALLECK. Would not that involve, Mr. Pettengill, the distinction between a utility and a private business?

Mr. PETTENGILL. Well, it might.

Mr. BOREN. Mr. Chairman——

The CHAIRMAN. Mr. Boren.

Mr. BOREN. In order to clarify that question, Mr. Pettengill, you are thinking in your question of a situation where the same company that is a producer and a carrier is also a distributing agent in the State where the product sells.

Mr. PETTENGILL. It might not be the retail distributing agency, it might be selling at wholesale: but, it is a producing company.

Mr. BOREN. Transmitting and selling its own property.

Mr. PETTENGILL. Producing and selling its own gas. I want to know the constitutional authority under which the Federal Government can tell a man in that sort of a situation how much he can charge for it.

Mr. BOOTH. I would like to just refer again to the fact that I am offering for consideration by this committee an amendment which would authorize the Federal Power Commission to fix temporary rates. I think it is generally recognized that effective and complete regulation of public utilities in the public interest is hardly possible in the absence of temporary rate-making power.

There is one other thing.

Mr. BOREN. I would like to ask a question.

The CHAIRMAN. Mr. Boren.

Mr. BOREN. If I understand your position on this bill, you completely endorse the bill as it is and suggest that an extending amendment be made. You endorse all of this bill and you are simply asking that certain amendments be made extending the powers that are already embodied in the bill.

Mr. BOOTH. That is correct. I am wholly in sympathy with the bill.

Mr. BOREN. Now, subsection (b) of section 5 of this bill sets up a system whereby the Federal Commission might run the errands for the State commissions, and I would like for you to give me your opinion on that subsection, as to what particular benefit that would be to the general welfare and why the Federal Government should take this additional burden which apparently belongs to the State commissions?

Mr. BOOTH. Well, I think that the provision is a desirable one. I think that our experience indicates that it is quite vital for the State commissions and the Federal Commission which regulates the same subject matter to work together in order that the public may receive the fullest possible protection.

Mr. BULWINKLE. I might call the gentleman's attention——

Mr. BOREN. I am waiting for his reply.

Mr. BULWINKLE. Pardon me. Go ahead.

Mr. BOOTH. And that is just a provision to enable the Federal Power Commission to render proper aid to a State commission in the determination of a local rate ultimately by the State commission.

Mr. BOREN. As I see that subsection, it is simply this. Will you correct me if I am wrong from your standpoint and your experience? As I see it is simply details the Federal Government to be a news-gathering agency in a situation where the State commission has the authority to act and has the duty to act for the general welfare.

Mr. BOOTH. Well, there might be some question as to whether or not the State commission either would have the authority, for example, to examine the books of a wholly independent pipe-line company and the Federal Power Commission might be in a better position to get that information than the State commission, and it leaves the matter to the discretion of the Federal Power Commission. I doubt whether there will be any great abuse of it. I think that it is necessary. I think, though I am not certain, that substantially the same provisions may be found in the other bill.

Mr. BOREN. Do you have any particular objection to leaving the burden with the State authority, leaving the entire burden of all acts, concerning which the Federal Commission does not have authority—leaving that burden entirely to the States?

Mr. BOOTH. Certainly I believe that the States ought to do the job that is constitutionally and legally theirs, and what we would like to have done is to have the Federal Power Commission authorized to take over or given the authority to fix the interstate wholesale rates, so that the ultimate consumer can receive better protection.

Mr. BULWINKLE. Mr. Chairman——

The CHAIRMAN. Mr. Bulwinkle.

Mr. BULWINKLE. I just wanted to call the attention of the committee to the fact that Mr. De Vane in his brief on pages 14 and 15 of the hearings on H. R. 11662 last year covered the subject.

Mr. BOOTH. There is just one other amendment that I want to call to your attention and then I am through.

Mr. BULWINKLE. And Justice McReynolds decided it was constitutional.

Mr. KENNEY. Mr. Chairman——

The CHAIRMAN. Mr. Kenney.

Mr. KENNEY. I would like to make the request of Mr. Booth that he insert in the record the citation from the court of appeals that he referred to.

Mr. BOOTH. Yes, sir; *Bronx Gas and Electric Company* v. *Maltbie*, 271 New York, 364.

Mr. KENNEY. Mr. Booth, there was some discussion at the last hearing dealing with depreciation. You made some reference today to the life of a field. Has it been the practice to take into consideration the immediate source of supply or in considering depreciation have you thought of extending the pipe lines from fields that might be exhausted to other sources of supply?

Mr. BOOTH. Well, I am really sorry. I cannot answer that question, because my familiarity with depreciation and depletion, and the technical matters, like depletion of natural-gas fields, and depreciation of pipe lines, is of a rather limited character, and that would require an answer by a technical expert. I think it is usually limited to the first and the source that is immediately available and to the company which is engaged in the rendering of the service.

Mr. KENNEY. Do you know whether it has been determined what the average life of the field is?

Mr. BOOTH. Well, I think that they vary. I think the Texas fields vary, and then that is generally a matter of expert opinion which varies from one engineer to another and from one geologist to another.

Mr. KENNEY. Have you any idea as to how many years?

Mr. BOOTH. Well, I really am not in a position to intelligently respond to that question.

Mr. HALLECK. Mr. Chairman——

The CHAIRMAN. Mr. Halleck.

Mr. HALLECK. I would like to ask you whether or not the pipe-line company to which you refer as serving the Chicago area has a monopoly on that business or are there competing sources of supply for the business in that area?

Mr. BOOTH. It has a monopoly.

Mr. HALLECK. Is that situation of monopoly generally prevalent throughout the country in respect to the furnishing of natural gas from the source of supply?

Mr. BOOTH. I am not familiar with many cases where there are competing natural-gas lines. That is, there is no other pipe-line company that runs up to the northern part of the State of Illinois and that is serving Chicago. There is a pipe-line company that serves the central part of Illinois, the Panhandle group, and they have now gone up to Detroit; but I have never heard that there was any possibility that the Panhandle people would compete with the Natural Gas Pipeline Co. of America in the Chicago market. As a matter of fact, the Chicago companies have a 26-percent interest, stock interest, in the Natural Gas Pipeline Co. of America.

Mr. HALLECK. You referred a moment ago to a contract which I think you said had 15 years to run, or was a 15-year contract.

Mr. BOOTH. The original agreement between the Natural Gas Pipeline Co. of American and the Chicago District Pipeline Co., I believe, has a 15-year life, beginning with June 25, 1931, with an option upon the part of the Natural Gas Pipeline Co. of America to continue for 5 years.

Mr. HALLECK. Of course, it is your idea that if this bill should pass and the Commission be given the authority contemplated in this bill, that that contract could be superseded or invalidated insofar as attempt to fix the rates of charges is concerned?

Mr. BOOTH. That certainly would be my position and we certainly would ask the Federal Power Commission promptly to consider the question as to whether or not the Natural Gas Pipeline Co. of America is earning an unfair return upon the fair value of its property.

Mr. MAPES. As I understood you at the beginning of your testimony, you said that 82 percent of the total consumption of gas in the State of Illinois was received from the Texas field.

Mr. BOOTH. Yes; I may have——

Mr. MAPES (continuing). Is there any natural gas produced in the State of Illinois?

Mr. BOOTH. There may be a little; I doubt it. There is one thing I would like to correct on that. I am not sure, I have forgotten whether the Panhandle Eastern Gas Pipeline Co. is selling only Panhandle gas or whether a part of its gas from Oklahoma. I think it gets all of its gas from Texas, but I would have to look up that point.

Mr. MAPES. In the State of Michigan they are producing now a great deal of natural gas. You stated a moment ago that the Panhandle Co. in Texas was transporting gas into the city of Detroit, Mich. This bill contains a new feature, as I understand it, which prohibits anyone going into a field that is already served without getting a certificate of convenience and necessity from the Commission. Suppose the supply of natural gas produced in Michigan was enough to meet the demands of the cities in that State, could this Panhandle Co. go into those cities, Detroit, for instance, without the consent of the State commission or any other commission and carry in competition with Michigan gas?

Mr. BOOTH. Could the Panhandle people bring a line there without a contract with the Detroit City Gas Co. and serve the territory served by the Detroit City Gas Co. without the consent of the Michigan Commission?

Mr. MAPES. Yes.

Mr. BOOTH. I am not fully familiar with the Michigan law; I am not certain. I should think that no company in Michigan should be able to compete with another public utility with existing facilities without the consent of the Commission. Of course the interstate company itself might just build its line to the State line and the State of Michigan would have no control over that; that is what we refer to.

Mr. MAPES. The Panhandle Co. is an interstate company, is it not?

Mr. BOOTH. That is right.

Mr. MAPES. It can therefore run its line into the city of Detroit without any reference to the action of the State commission. Is that right?

Mr. BOOTH. I should think so; that is what the Natural Gas Pipeline Co. of America is doing. Now, gentlemen——

Mr. MAPES (interposing). Do you think that it should be able or allowed to do that? I notice that the Crosser bill emphasizes the desirability of preventing monopoly. The provision in the Lea bill requiring a certificate of convenience and necessity from

the Commission assumes that the business is monopolistic; before putting in the pipe line would seem to increase monopoly; do you think that is desirable?

Mr. BOOTH. Well, the Lea bill is predicated upon the philosophy that the public interest can best be served by a regulated monopoly, as far as the relationships between public utilities and the public is concerned. There is sometimes some question in my mind as to whether some competition is not necessary to supplement regulation.

Mr. MAPES. Do you think it is desirable to prevent more than one company furnishing gas, natural gas, to the people of the city of Chicago?

Mr. BOOTH. This law would not have that effect; it would merely——

Mr. MAPES (interposing). It would have that effect unless the Commission agreed to it, would it not?

Mr. BOOTH. That is right. That is, it would merely give the Commission the discretionary and determinative power as to whether it should permit competitive lines to be built.

Mr. MAPES. Do you think that is desirable?

Mr. BOOTH. Well, that depends upon the individual circumstances. Of course, as a practical matter, there is not much competition between utilities now.

Mr. MAPES. Do you think we should encourage the continuation of that condition by law?

Mr. BOOTH. Why, I believe this law must be considered upon the fundamental premise that the Federal Power Commission and the State commissions will effectively regulate these companies and thereby best serve the public interest.

Mr. MAPES. Suppose the Federal Power Commission should say it was desirable to have the Panhandle Co. run into the city of Detroit and the State commission should say that the Michigan supply of natural gas was ample to take care of the situation. How would you handle that?

Mr. BOOTH. You mean as to whether or not competing lines should be built, or whether or not the Panhandle people should be allowed to bring their lines into Detroit in the first place? I am not sure whether I understand the purport of your question.

Mr. MAPES. Well, suppose the Federal Power Commission would grant the Panhandle Co. the authority to build its lines into Detroit, and then the State commission should say that that was unnecessary and was not in the interests of the general welfare, because the State companies were furnishing an adequate supply of natural gas. How would you handle that situation?

Mr. BOOTH. I think the State laws could be so written that the company engaged in the local distribution, before it undertook to render that service, would have to receive the authority of the local commission, and notwithstanding the fact that the Federal Power Commission might have the authority to authorize the Panhandle people to build an interstate line up to the city of Detroit and enter into a contract with the city of Detroit, as far as the rendering of local service by the Detroit City Gas Co. is concerned, I should think that the Detroit City Gas Co. would have the final say on that.

Mr. MAPES. In other words, is this your position, that the Panhandle Co. might transport gas to the city of Detroit, if it saw fit, but

it could not engage in the distribution of that gas after it got it there without the consent of the State commission.

Mr. BOOTH. I believe that the law ought to be that as far as the locality served is concerned that the State or local authorities ought to have, and I believe they do have, the power, in most cases, of determining the character of the service to be rendered by the local distributing company. And it seems to me that in such a case before the Panhandle Co. could build a line and enter into a contract with the Detroit City Gas Co. that the Detroit City Gas Co. could not enter into such an arrangement if the State or locality to be served was adequately supplied with gas.

Mr. MAPES. That would be your position?

Mr. BOOTH. I should think that would be the case.

Mr. MAPES. Thank you.

The CHAIRMAN. Mr. Booth, we have two other witnesses who want to be heard.

Mr. BOOTH. Let me suggest this other amendment and then I am through.

The CHAIRMAN. Very well.

Mr. BOOTH. First I want to offer for the record a provision which would have the effect of authorizing the Federal Power Commission, under any temporary rate situation to fix temporary rates.

Mr. BULWINKLE. Fix temporary wholesale rates?

Mr. BOOTH. Yes. The proposed temporary-rate provision would read as follows:

> The Commission may, in any proceeding involving the rates of any natural-gas company brought either on its own motion or upon complaint, upon notice and after hearing, if it be of opinion that the public interest so requires, immediately fix, determine, and prescribe temporary rates to be charged by said company pending the final determination of said rate proceeding. Said temporary rates so fixed, determined, and prescribed shall be sufficient to provide a return of not less than 5 percent upon the original cost, less accrued depreciation, of the physical property of said company used and useful in the gas service, plus a reasonable amount for working capital, and if the duly verified reports of said company to the Commission do not show the original cost, less accrued depreciation, of said property, the Commission may estimate said cost less depreciation and fix, determine, and prescribe rates as hereinbefore provided. In any such proceeding, whenever the annual depreciation expense is computed upon the sinking fund method, no depreciation shall be deducted from such original cost.
>
> Temporary rates so fixed, determined, and prescribed under this section shall be effective until the rates to be charged, received, and collected by said company shall finally have been fixed, determined, and prescribed. The Commission is hereby authorized in any proceeding in which temporary rates are fixed, determined, and prescribed under this section, to consider the effect of such rates in fixing, determining, and prescribing rates to be thereafter charged and collected by said company on final determination of the rate proceeding.

The third amendment that might be made relates to that part of section 4 (e) which provides that the Commission may suspend increased rate schedules for a period not to exceed 5 months. I am of the opinion that 5 months is too short a period for an investigation of increased rate schedules for interstate natural-gas utilities. If the increased schedule goes into effect it will undoubtedly result in efforts by the local distributing company or companies affected thereby to obtain increases in rates to cover the additional cost of such gas. For that reason I believe it of considerable importance that, notwithstanding the bond provision, the Commission be given ample

opportunity to enter a final order in such a case. The 5-month period should, therefore, be changed to a period of from 9 to 12 months.

The first amendment which I had intended to offer would be covered by Mr. Benton's suggested amendment to subsection (b) of section 1, and amendment to subsection 5 of section 2, so that it would cover not merely the sale of such gas at wholesale, and all gas in interstate commerce for resale to the public, but all sales in interstate commerce at wholesale for resale; so that it would cover the transactions between the Natural Gas Pipeline Co. of America and the Chicago District Pipeline Co.

I appreciate the courtesy you have given me, Mr. Chairman, and I want to again reemphasize the fact that in my judgment the enactment of this law with appropriate amendments is absolutely vital in order that the consuming public of natural gas or mixed natural and artificial gas be fully protected.

I would like also to have permission to put in the record—and I thought I had it with me—a letter written by Chairman Slattery of our Commission to Chairman Lea of the committee, in which he endorses this bill.

The CHAIRMAN. It may be incorporated in the record.

Mr. BOOTH. Thank you.

The CHAIRMAN. Thank you, Mr. Booth.

We will next hear Mr. John W. Smith, of Detroit, Mich.

Mr. BOREN. Mr. Chairman, I would like to make this observation for the record and as a challenge to the proponents of this bill: That subsection B of section 5 provides for a growth and for the extension of the influence of a Federal bureau, or commission, in a realm wherein this proposal submits on its own acknowledgment that the Federal authority and responsibility does not rightfully exist.

STATEMENT OF JOHN W. SMITH, NATIONAL CHAIRMAN, CITIES ALLIANCE, DETROIT, MICH., CHAIRMAN, NATURAL GAS COMMITTEE, UNITED STATES CONFERENCE OF MAYORS

Mr. SMITH. Mr. Chairman and gentlemen of the committee, I appear here as national chairman of the Cities Alliance, an association of midwestern cities formed some 2 years ago in an endeavor to collaborate and cooperate for the purpose of securing natural gas at proper rates. This organization, which was formed in Columbus, Ohio, is composed of midwestern cities and several State and municipal organizations. I was elected chairman of it, and we proceededed to study this entire picture of natural gas. In my city of Detroit, Mich., I had been working for 10 years to secure natural gas, and, along with some other cities in Michigan, we were told there was not a sufficient supply in that field. That field was studied by the State geologist and then the services of the geologists of the United States, together with them, and later on at the request of the Governor by the Bureau of Mines, and we were informed that there was not a sufficient supply of natural gas in Michigan; they still maintained there was no other source in the State. We were also told by the Detroit City Gas Co. that there was not any natural gas available, and while they did not believe there was much supply, they were surprised when Senator Nye here issued a statement

which he had dictated after having read the testimony in a suit being tried in Delaware, wherein he pointed out that certain gentlemen had organized for the purpose of bringing natural gas from West Virginia into Detroit.

I know in 1925 the big companies were telling us that they could not get natural gas, and at that time I did a lot of work along with others endeavoring to get natural gas for the city of Detroit, and other cities were equally interested in bringing natural gas to their cities.

Now then, of course, the question that my friend over here asked might very well apply to the city of Grand Rapids, where he says they are getting along very well, but we do not have a sufficient supply of natural gas, and that is true of a great number of the other cities in Michigan. As far as I am concerned the State utility regulatory bodies have been complete failures. The only way in which the cities and the consuming public in this country are going to secure any remedy is through some integrated relation with the United States.

Mr. Chairman, back here with me, with this same protest, voicing the same protest, is the mayor of Cleveland; my Detroit colleague, Councilman Eugene Van Antwerp, the mayor and officials of the city of Portsmouth, Ohio, which cities have very different situations, where the one is paying a very high price, and is located right at the supply, and the other is paying a reasonable price and is located some distance away.

As I say, these cities were organized, and afterward were invited to join with that great organization, the mayors' conference, and at these two organizations I was requested to read a paper, and following which, last year, a committee, by resolution of that group, was appointed by that group, the conference, for the purpose of further study and presenting to you suggestions for the legislation which you have before you today.

I might say to you so far as the Crosser bill is concerned, of course, the cities feel that under the former legislation the Federal Power Commission by its decisions and by its work has done a great job in making an investigation of the natural-gas industry in this country. We do not care which of these bills is passed, just so long as you give us a bill that will regulate this industry.

I marvel when I stop to think what this great industry has been doing in this country, where, as the Secretary of the Interior pointed out, there is enough gas wasted every day in the United States that if used would produce more power than Muscle Shoals can produce in a single day, but as long as that has been left and will be left in the hands of monopoly it will destroy the reserve, this greatest of our reserves, the natural-gas resources in this country.

For instance, in Kansas City they are paying 40 cents at the gate, yet it is situated right on top of the gas supply, practically, while in Detroit, Mich., 1,200 miles away from the supply the rate is 33½ cents, and the cost of transporting that gas through the pipe lines is some 30 cents. And, in Cleveland, Ohio, they are paying a lower rate and the mayor has asked for a reduction of the gate rate of 38½ cents. While at Portsmouth, Ohio, located just a few miles from the West Virginia field where they get the gas, they are paying more.

There is no way in which the consuming public, the producers of gas, and the investors, if you please, will be protected except by the passage of some legislation such as that proposed in this bill. And, Mr. Chairman, we are offering several amendments to some sections of the bill which we believe will take care of the situation.

I have the same feeling, if you will permit me to say so, about this bill that I had about previous legislation, recommended by the President and passed by Congress, the holding-company bill, and in my humble judgment, after 25 years' experience in municipal and State government work, I believe that this bill, so far as its provisions are concerned, is just as important and will mean just as much to the investor and the public.

In connection with the questions asked by Congressman Mapes on the same subject, the answer to that would seem to be that if there is no supply and no reserve in the State that question would not arise.

Thank you very much.

Mr. CARVER. Mr. Chairman, my name is Robert D. Carver, of Kansas City, Mo. I happen to be a director of the Gas Service Co., and I would like to have a moment to answer the statement of Mr. Smith.

The CHAIRMAN. You will have an opportunity later.

Mr. CARVER. Because it is misleading, and I would like to answer it.

The CHAIRMAN. We cannot give you time just now, but later on you will be given ample opportunity.

Mr. CARVER. Very well.

The CHAIRMAN. We will now hear from Mr. Harold Burton, of Cleveland.

STATEMENT OF HAROLD BURTON, MAYOR, CLEVELAND, OHIO

Mr. BURTON. Mr. Chairman and members of the committee, I would like to present this matter simply in the light in which I have seen the development of this legislation through the experience of the city of Cleveland with natural-gas lines and through the experience of other smaller communities in Ohio in which I have been connected with the gas controversies.

I think if we divide the gas service into four groups we can see the problem that is presented by this bill. First of all, there are gas companies that distribute gas which they produce themselves, all of it, within the State. That is absolutely taken care of because in practically every State we have, including Ohio, regulation by the State commission.

Next you have the kind of case that was pointed out to you this morning where effort is made to solve it on a State-wide basis at this time, where some distributing company that does not have its own supply but derives its supply by contract from independent wholesale gas companies; the entire resale being within the State is at the mercy of the wholesale company, because so far as the State of Ohio is concerned by reason of the way the public-utilities law is written, it provides for regulation of rates of distributing companies, but leaves out of the jurisdiction of the utility commission the wholesale company.

A simple example will show the point that applies all the way through this field. In the village of Oberlin, where Oberlin college is located, they are supplied gas by a local distributing company which had a contract with an unrelated and unaffiliated wholesale company, which contract was for a period of 10 years and provided for an increase in the wholesale rates at the rate of 1 cent per year for each of those 10 years. And when anything was said by the local utility commission to the local company it simply said, "Why, you are fixing the rate, but we have to pay 1 cent more per year for each 10 years to the wholesaler and if we are forced to charge less, you will ruin us."

That was substantially the situation in all cases in the State of Ohio until within the past 2 years the State has amended the utility law and placed the wholesale companies under the jurisdiction of the utilities commission.

Now we come to the gas company that has a local distributing system and buys gas wholesale from the gas company that is outside the State. The city of Portsmouth, Ohio, as reported here today, is an outstanding example that buys gas in Ohio from the local distributing company, and the wholesale company is across the State line, and there is not any public utility in the State of Ohio that has jurisdiction over that wholesale company. They can fix the rate that will be charged locally; that is, in dealing with the distribution of gas to the local people in Portsmouth, Ohio, but they cannot examine into the records and into the books of the wholesale gas company to determine what would be a proper rate for the local distributing company, what it would have to pay for the gas it buys from the wholesale company.

The fourth kind of a case is the situation in the city of Cleveland. We are served by the Eastern Ohio Gas Co., which is a distributing company. It brings the gas from the Ohio River through Ohio and therefore does a wholesale service within the State, sells to a distributing company; it buys the gas at the Ohio River from the Hope Natural Gas Co., a completely affiliated company—both with the Standard of New Jersey—and pays a river rate there.

Now, we have been effective in that kind of a relationship where there is affiliation of the wholesale company with the local distributing company because of the partial control of the State commission, for the reason that in the fixing of rates the State commission is able to bring before it both companies and, say, for instance, that the retail company, the Eastern Ohio Gas Co., the one operating in the State, pays a certain price for wholesale gas, but it buys it from another affiliated company, and therefore there is control to that extent over the price it can charge because that is one of the expenses of the Eastern Co. Therefore, the State commission can require that that expense be fixed at a reasonable figure as one of the expenses of the local company, because it is within the control of the commission. Therefore, in that kind of a case partial control does exist by the State commission on the question of rates alone, but there is no jurisdiction in the Ohio commission to the matter of service performed by the Hope Natural Gas Co. Therefore, you have a sort of halfway control over the wholesale, in that we can insist in Ohio that the company makes the showing that the rates are very reasonable, but the Ohio commission cannot control the

operating company or fix a policy with reference to it in the State of West Virginia.

It is at that point that we want the Federal Government to use its jurisdiction over that interstate relationship between these affiliated concerns, the production of gas in West Virginia and the transportation into Ohio and distribution in Cleveland.

It was on that point that Congressman Boren raised a question about section 5 (b) in the bill, and an illustration of that would be the complaint in the Cleveland case. And we have had our commission in Ohio investigating the Cleveland rates, getting all of the facts in Ohio, and then the question came up as to going into an examination of facts in West Virginia where they had no jurisdiction to secure them, and the Ohio Commission requested from the State of West Virginia that it compel the West Virginia Co. to submit to an investigation of questions bearing directly upon the validity of the wholesale rates and the rates of the affiliated company as determining the rates in Ohio of the local company. The request was granted, and under this consent arrangement worked out with the Eastern Ohio Gas Co. and the Hope Natural Gas Co., the State of Ohio, through the Ohio Commission, went into West Virginia, outside its own jurisdiction, by consent, and examined the books, by consent examined the property, and therefore was able to get the information before the Ohio Commission in fixing rates. But in previous years that consent had been refused. And I think there should be inserted in section 5 (b), if that language is not broad enough, authority for the Federal Power Commission to make an examination of property which is without the jurisdiction of the State; that the State could call upon the Federal authority to make an examination in another State of a company's records, which company came into the State, where the property is outside of the State, I think it would be a proper application to the Federal authority to have it assist in the investigation of the interstate company as bearing upon the State case, securing data outside the State itself.

Mr. BOREN. May I ask a question, Mr. Chairman?

The CHAIRMAN. Yes, Mr. Boren.

Mr. BOREN. If this should apply only to instances which you suggest, I would find no fault against securing full information. But is it not your judgment that cooperation between the State commissions will make it possible to reach this whole situation designed to be covered in section 5 (b)?

Mr. BURTON. I do not think we could fairly place reliance on that. It would be difficult, in my opinion, if we were to rely upon that, where you are required to compel a company in one State to submit to examination of another State commission. Then there is another reason: Local communities are dealing with public utilities, like power and natural-gas companies, and in many of them only small amounts of oil and gas are taken in proportion to the size of the problem to be solved. In the case of Cleveland the fight was begun back in 1931 and was not concluded until 1934, covering a rate which would amount to $1,000,000 a year. Cleveland spent over a half million dollars in fighting the case. We were successful and had a $3,000,000 refund in rates, or a million dollar a year rate, just because Cleveland had enough money to fight that case. That would not have been possible in the small community, and there are a lot of communities all along the line of this company from the Ohio River up to Cleveland which takes

about half of the gas that is supplied in the State of Ohio, and there would not have been any one community which would have had enough money to make the fight; they would not likely have had enough money, on account of lack of funds or lack of amount of rates involved to make the fight. Therefore I think it is important today that if we are going to regulate fairly and adequately, that the State commission in all intrastate matters and the Federal Government in all interstate matters be authorized to carry on in the public interest the investigations required in solving the problems which are faced. If these communities are members of the United States population and the United States population is appropriately represented, the Federal Government ought to be in position to carry on the fight for them in making investigations on sufficient scale to solve the problem. In the absence of such investigations, burdened with the authority of meeting the local problem, under the law which is not complete, without the ability to meet the problem, it is important that some commission have authority to assist the local commission. And I cannot give a more important illustration than that referred to of the city of Cleveland and the communities along the pipe line served by the gas company. These local communities could not have possibly carried on a fight involving the amount resulting from the increased rates paid to a company operating in West Virginia.

In our case, for example, the local commission in this case would be without authority to secure data from the company operating in West Virginia in its effort to regulate the rates of the East Ohio Gas Co., but would be assisted by the Federal Government making an investigation outside the State.

The CHAIRMAN. Mr. Burton, to what extent is gas consumed in a city like Cleveland? How large is the consumption of gas in Cleveland?

Mr. BURTON. How much gas does it consume?

The CHAIRMAN. Yes.

Mr. BURTON. I am advised about six to eight million dollars annually.

The CHAIRMAN. About $6,000,000 to $8,000,000?

Mr. BURTON. The gross revenue of the company, yes.

The CHAIRMAN. And how much of that is transported from outside the State?

Mr. BURTON. It is about 50 percent, I think—no, about 70 percent which Cleveland consumes comes from out the State and 30 percent from the Ohio field.

The CHAIRMAN. That is all you want here; you want to complete the power to regulate the excess from without the State, that being a factor involved in the regulation of rates?

Mr. BURTON. That is true.

The CHAIRMAN. Your own State commission's authority is insufficient to cover the field except by having Federal regulation to complete that authority?

Mr. BURTON. Exactly.

Mr. MAPES. Would you mind telling us for the record who you are and in what capacity you appear?

Mr. BURTON. My name is Harold Burton, mayor, city of Cleveland, formerly director of law at the College of Oberlin, formerly from the community of Oberlin in Ohio.

The CHAIRMAN. Any further questions?

Mr. CROSSER. I was going to ask, Mr. Mayor, even granting that the city of Cleveland had plenty of funds to make the fight, there is no possible certainty, is there, about what would be the result under the present circumstances. Under the present arrangement, there is no certainty about the results which might be procured for the citizens of Cleveland even though you had funds with which to make a fight.

Mr. BURTON. You are asking for my opinion of the utility commission?

Mr. CROSSER. No; my question is with reference to the Federal Government intervening. You would not be sure of getting fair rates under the present set-up even though you had the money with which to make a fight?

Mr. BURTON. I would not want to go that far. If the utility commission, say, in Ohio had a half million dollars to spend, I believe we could get fair results. It would depend upon the Utility Commission of Ohio and depend upon its success in going into West Virginia and getting authority to make the investigation, because it has no such authority now.

Mr. CROSSER. That is what I am getting at.

Mr. BURTON. Yes.

Mr. WADSWORTH. May I ask a question?

The CHAIRMAN. Mr. Wadsworth.

Mr. WADSWORTH. West side Ohio gets some gas from the Panhandle field, does it not; that is, the western side of your State?

Mr. BURTON. I understand from Mr. Reed there has been none from the Panhandle Gas Co. We have none in the East Ohio Gas Co., but when you get close on to the line of Illinois, I could not be sure of that.

The CHAIRMAN. Thank you, Mr. Mayor.

Mr. BURTON. Thank you.

The CHAIRMAN. Those who have testified today will have the privilege of revising their remarks; if they will apply to the clerk of the committee they can obtain that opportunity.

Mr. Daily, how much time will you require? We have about 10 minutes left.

STATEMENT OF FRANCIS L. DAILY, REPRESENTING CHICAGO DISTRICT PIPELINE CO., CHICAGO, ILL.

Mr. DAILY. Mr. Chairman and members of the committee, my name is Francis L. Daily. I am here representing the Chicago District Pipeline Co., of Chicago, Ill. My address is 122 South Michigan Avenue in that city. My purpose in appearing before this committee is to suggest one amendment to the pending bill, of a very definite and limited character, which I will try to explain both as to its purpose and to its effect.

The bill as I view it contains a hiatus, a gap, in the treatment that it gives in the natural-gas picture. It assumes that all companies are divided into two classes, interstate companies, which bring gas across State lines, and so forth, and distributing companies which buy gas from companies of that nature and sell it at retail locally, and that is generally true, but in at least one situation that I am here representing, and possibly others, which I in no way represent, that is not true.

I am speaking of the Chicago situation. The natural gas which comes to Chicago, comes in from the Texas field through the line of the Natural Gas Pipeline Co., as has been explained, through several States, and gets into Illinois, finally to Joliet, which is not very far, I believe about 40 miles from Chicago, and into the distributing companies under contracts which have been referred to here. Now this company that I am appearing here for, the Chicago District Pipeline Co., takes its gas in through large transmission lines, just as large as the interstate lines and transports it an additional 40 miles to the Chicago city limits, and on the way it picks up other outlets through companies; it serves the section along the way. In fact, it sells gas to three local distributing companies at various points along those 40 miles. Its lines are entirely in the State of Illinois. This company, the Chicago District Pipeline Co., operates solely in the State of Illinois under authority of the Illinois Public Utility Commission, under a certificate of convenience and necessity from the Illinois Commission; and, its rates are on file with the Illinois Commission and its acts are supervised by that commission; in every respect it is an Illinois public-utility company. But because it does not have any pumps or facilities but takes its gas at Joliet, at the interstate pressure, and without additional pressure or additional treatment of the gas permits it to flow through the line, and sells it to a few places along the line, without doing anything to the gas, it is entirely conceivable—I hope that it is not true—but it is that it would be held to be an integrated line as a part of interstate commerce from Texas to the local distributing company, even though it has no connection with that commerce except the fact that it takes its gas out of the line that flows through those States. In other words, it represents the situation in between what the bill is designed to cover and the local situation. The Ohio local commission, which was before you, has considered in its experience this as a local utility. There as in Illinois, it has a few small sales; it wholesales entirely, but that is a very small part of it, and so I do not think it should be considered under this bill in any way, as a practical proposition, but here, it buys its gas in Illinois and resells it in Illinois and is directly under the local regulations of the Illinois Commission, and is distinctly not national in character, and still because of the decisions of the courts defining interstate commerce, mostly in railroad cases, and even in some gas cases, as far as that goes, it is conceivable that under the language of this bill as it now stands—and for that reason we think it ought to be corrected—that the contention might be made that this Illinois line was engaged in interstate commerce, even though all of its business is done within the State, which would result in the transfer of that control from the local commission where it belongs to the Federal Power Commission. That is not desirable, and I assume it is not the desire of you gentlemen or the desire of Congress; I think that was put in through an oversight, and I am calling it to your attention; I think it is an oversight.

Certainly it is not the purpose of this bill that the local distribution of gas and the local transportation of gas and the local sale of gas shall be under Federal control. And just because there is no specific provision here which takes care of the in-between situation,

where you have transportation of wholesale gas solely for local distribution, all of which occurs within the State, which gives rise to the situation causing me to be here today. This statement is limited to this one State, but there may be others; but I do not know of any other situation exactly comparable, but I think this will take care of the whole situation as it affects our case, and I want to make the following suggestion to the bill, if I may, Mr. Chairman. May I offer, with respect to the pending bill, an amendment to section 1 (b) the following amendment to be inserted as a proviso in the bill by adding after the word "gas", in line 9 on page 2, the following language:

or to the transportation and sale of natural gas wholly within a single State under authority granted by the State commission thereof or the facilities used for such purpose.

That is what this company which I represent is, and with that additional language it will make it very clear that the local operation is not under Federal control, as I do not think it was intended to be; but if that is not put in there a great deal more trouble will be consumed for the company and for the courts and the commissions in finding out whether or not it is or not than would be required in writing those few words in.

Mr. COLE. May I ask you a question?

The CHAIRMAN. Mr. Cole.

Mr. COLE. Is your company now regulated by the local commission?

Mr. DAILY. We are now regulated by the Illinois commission in every respect.

Mr. COLE. Does it determine the reasonableness of what you pay the Panhandle for gas?

Mr. DAILY. We do not buy Panhandle gas. We buy it from the Natural Gas Co. of America, but we sell—

Mr. COLE (interposing). That is Panhandle gas.

Mr. DAILY. You mean, Panhandle, from Texas?

Mr. COLE. Yes.

Mr. DAILY. It comes from the Texas Panhandle, yes; I thought you meant the Panhandle Gas Co.

Mr. COLE. How does the Commission determine whether or not your contract with the other company calls for a fair price?

Mr. DAILY. What has happened, as Mr. Booth told you, first, in the original contract filed in 1931 with the Commission, it was on the basis of operating costs for several months, and that was extended for 2 or 3 years, and on that point a new contract was made, or an amendment to the contract was made in 1935, which was filed with the Commission and the Illinois Commission filed its consent to the contract at that time. And the schedule of rates is based on that contract. But in recent months, it has seen fit to reopen the case, and sent a communication to the company, but that is not on a question of controversy which we are discussing here; it is primarily with respect to the Interstate Pipeline Co., on the question which Mr. Booth described.

Mr. COLE. I did not hear you.

Mr. DAILY. There is a controversy now on the Federal question, in which the Commission is attempting to go into the affairs of the Interstate Pipeline Co. on the points mentioned.

From our point of view, from the point of view of this local transportation company, we have submitted to the Commission our proposed contract, and I believe either a month or 2 months ago the Commission consented to the execution of that contract, and approved the schedule of rates based on that contract of December 1935, and since that time we have been and are now operating under that schedule and under that contract, but the Commission has recently reopened that proceeding to reexamine into the possible Federal questions which were described to you. That only affects the company in this way: That if the Commission should ultimately find, in reopening the question of this company's operation something different from the schedule based upon this contract, it would cause a controversy between the seller and the Illinois Commission. As the matter now stands we challenge the right of the Commission to ignore the operating expenses that we have incurred in the discretion of the company's management, especially because we have joined in a contract for the purchase of gas in Illinois and our position is the Commission has no power to set aside that contract.

Mr. COLE. Your company deals with towns along the line?

Mr. DAILY. No; with distributing companies.

Mr. COLE. With distributing companies along your line?

Mr. DAILY. That is right.

Mr. COLE. Under the control also of the Illinois commission?

Mr. DAILY. They are also controlled by the Illinois commission—the local distributing companies.

Mr. COLE. And as I understand you, you are perfectly satisfied with the Federal legislative set-up, insofar as it deals with the interstate company with which you have a contract.

Mr. DAILY. I did not come down here to discuss the merits of the bill, as to whether it should pass. I am not here opposing the bill, if that is the question.

Mr. COLE. You are not opposed to it?

Mr. DAILY. I am not here opposing the bill. I am just suggesting that if it should pass we desire that it should be amended; that it ought to be clarified on that one single point to make it clear where our company stands in the picture. I do not think it is clear now. Obviously we do not wish—and we do not think it was the thought or the intention that, such companies as this be under Federal control. Regardless of whether it might be so construed ultimately, we think that difficulty can be avoided and that the bill can be cleared up by taking a pencil for about 30 seconds and doing what I am here asking you to do. I do not think it was the intent that local operations such as this should be put under Federal control, but if the language as it now stands goes in, it might be contended—I would not want to say it would be—but it might be contended that such operations were subject to Federal control.

Mr. MAPES. As I understand your amendment, it only applies to the cases which are regulated locally?

Mr. DAILY. By State commissions.

Mr. MAPES. By State commissions.

Mr. DAILY. Yes; that is right.

Mr. MAPES. And if a company did not come under the regulatory commission of the State, it would be outside of your amendment?

Mr. DAILY. Yes; my amendment would not apply.

Mr. MARTIN. May I ask a question?

The CHAIRMAN. Mr. Martin.

Mr. MARTIN. I want to ask you, Mr. Daily, if the bill were to pass with your amendment, do you think other lines or companies such as yours would be set up for the purpose of taking business out from under the Federal law?

Mr. DAILY. Well, I think, in the light of the existence of the Federal control, probably they would not. As to whether a company might desire to do that, that would depend, I suppose—well, I do not know just what it might depend on. That could happen. But I should think, if there were any reason why they wanted to, the State commission, under the circumstances, could look into the question—and this instance I have out here is the only one I can speak of—but the local commission could look into the question and see whether or not the service was needed. To put it another way: In order to set up a company to do it, the local commission would have to say there was a need for an outlet of the gas, all within the State and all under State control, so that no harm would be done. That would be all within the provisions of the local State laws and perhaps should be done by the commission. We do not want, by any misapprehension or by inference, to find ourselves under Federal control because of some oversight.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Daily.

The letter referred to a while ago by Mr. Booth, written by James M. Slattery, chairman of the Illinois Commerce Commission, to the chairman of this committee, as well as some other communications, are submitted for the record.

(The letters above referred to are printed in the record, as follows:)

ILLINOIS COMMERCE COMMISSION,
Chicago, March 10, 1937.

Congressman CLARENCE F. LEA,
Chairman, House Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

Re H. R. 4008.

DEAR CONGRESSMAN LEA: I am writing to you in response to the suggestion you made to Messrs. Harry R. Booth and William A. Dittmer, of the commission's staff, who conferred with you on Monday, March 1, in connection with the bill which you introduced in the House of Representatives which provides for the regulation of interstate natural-gas rates and companies. This bill is of great importance to the State of Illinois, since over 80 percent of the gas sold in this State is imported from other States. The annual payments to interstate natural-gas utilities by Illinois companies is now in excess of $14,000,000.

The problem of effective regulation of interstate natural-gas companies is of especial importance to us now, because there is pending before the commission an application of the People's Gas Light & Coke Co., which renders gas service in Chicago, for a $3,000,000 increase in its rates. The matter is also pending before the courts, and the commission's final order must be entered before May 24 of this year.

The largest item in the operating expenses of the People's Gas Light & Coke Co. is its payment for natural gas to Chicago District Pipe Line Co. This latter company is controlled by the People's Gas Light & Coke Co. and owns and operates a pipe line extending from some 40 miles away from Chicago to the Chicago city limits. Its operations are, therefore, intrastate. It purchases all of the natural gas which it transports from the Natural Gas Pipeline Co. of America, which is the interstate company transporting natural gas from Oklahoma to a point 40 miles distant from Chicago.

The People's Gas Light & Coke Co. owns indirectly about 25 percent of the voting stock of Natural Gas Pipeline Co. of America. The balance of the stock

is owned by the Standard Oil Co. of New Jersey and other strong oil interests. The purchases of natural gas for service in Chicago are covered by a series of contracts entered into some years ago. Under these circumstances, there may be some doubt as to whether the Illinois Commerce Commission could modify the price being paid by the People's Gas Light & Coke Co. for natural gas because of the excessive profits of Natural Gas Pipeline Co. of America.

Preliminary studies made by our staff indicate that the Natural Gas Pipeline Co. of America is currently making excessive profits to the extent of $1,500,000 to $3,000,000 per year, based upon a 6-percent return upon the cost of the pipe line.

If the pending bill is enacted into law, the Federal Power Commission would clearly have the right to examine into the profits of the Natural Gas Pipeline Co. of America; and if such profits were found to be excessive, to modify the price accordingly. A reduction in price would be reflected directly in a lower cost of gas to the People's Gas Light & Coke Co., and, of course, a corresponding increase in their net operating income. Therefore, any reductions ordered would be a direct element in the determination of reasonable rates for the People's Gas Light & Coke Co. in the city of Chicago.

I think this will indicate to you quite clearly the extreme importance to the State of Illinois of this bill.

Now, as to the amendments which were discussed by Messrs. Booth and Dittmer, the first one merely suggested a change in the wording, so that the bill would clearly and definitely apply to the local situation. As originally worded, the bill merely covered companies transporting gas in interstate commerce and selling such gas at wholesale for resale to the public. Due to the intervening Chicago District Pipe Line Co., the wording, if strictly construed, would not apply to the Natural Gas Pipeline Co. of America. Therefore, it was suggested, with the approval of Mr. DeVane, that the wording be changed to cover all sales of natural gas at wholesale for resale.

The second suggestion was that the law be amended to give the Federal Power Commission authority to fix the rates by temporary order. This is of a good deal of importance to us now because even if the bill is promptly enacted into law there may be some doubt whether the Federal Power Commission would be able to act in time to give us the benefit of their action in the present proceeding in which a final order by this Commission must issue not later than May 24 of the present year. The suggested amendment was patterned after the provision in the New York law recently adopted because this particular provision was recently sustained by the New York Court of Appeals in *Bronx Gas & Electric Co.* v. *Maltbie*, 271 N. Y. 365.

Please rest assured that we fully appreciate your efforts to bring about effective regulation of interstate gas utilities. You may also be interested in knowing that Governor Horner, of Illinois, has communicated with the Senators and Representatives in Congress from Illinois and has requested their support of this bill. I hope it may be shortly reported out of your committee and sent on to speedy enactment.

Very truly yours,

JAMES M. SLATTERY, *Chairman.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., March 4, 1937.

Hon. CLARENCE F. LEA,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

MY DEAR MR. LEA: I am directing your attention in order that it may be placed before the committee and incorporated in the records of any hearings which may be held on this subject, a letter from the Hon. Henry Horner, Governor of Illinois, in support of H. R. 4008, which provides for the regulation of interstate natural gas rates.

I want to join with the Governor of Illinois in supporting this proposed legislation. I trust that you will advise the committee of my interest in this matter.

With kindest regards, I am,

Very truly yours,

EDWIN M. SCHAEFER, M. C.

OFFICE OF THE GOVERNOR,
Springfield, March 1, 1937.

Hon. EDWIN M. SCHAEFER,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMAN SCHAEFER: There is pending before the Committee on Interstate and Foreign Commerce of the House of Representatives H. R. 4008, which provides for the regulation of interstate natural-gas rates. Proper regulation of wholesale rates charged to local utilities by the interstate companies will afford much-needed protection.

Illinois consumers now pay approximately $15,000,000 annually to interstate natural-gas companies and effective regulation of gas rates in Illinois will be immeasurable aided by the enactment of H. R. 4008.

The early enactment of this bill is of great importance to the people of Illinois. I respectfully urge you to use your efforts to bring about its passage.

Very truly yours,

HENRY HORNER, *Governor.*

NATURAL GAS

THURSDAY, MARCH 25, 1937

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., Hon. Clarence Lea (chairman) presiding.

The CHAIRMAN. The committee will come to order.

We will now hear Mr. Luke J. Scheer.

STATEMENT OF LUKE J. SCHEER, NATIONAL SECRETARY OF THE CITIES ALLIANCE, DETROIT, MICH.

Mr. SCHEER. Mr. Chairman and gentlemen of the committee, in view of the nature of the proposed amendments to this bill I believe that we would like to dwell very briefly——

Mr. MAPES. Would you mind stating for the record, your name and who you represent?

Mr. SCHEER. Yes; my name is Luke J. Scheer. I am national secretary of the Cities Alliance, an organization of about 100 cities, particularly in the Midwest, and especially in Ohio and Michigan, which was organized specifically for the purpose of obtaining lower gas rates, and was organized for no other purpose. It has been in existence about 2 years, during which time we have centered our efforts primarily upon a more effective enforcement of the antitrust laws.

Mr. MAPES. That is the organization that former Mayor Smith, of Detroit, spoke for yesterday?

Mr. SCHEER. Mr. Smith is the national chairman.

Mr. MAPES. He is the gentleman who appeared here yesterday?

Mr. SCHEER. Yes; the national officers of the Cities Alliance are, chairman, John W. Smith, president, common council, Detroit, Mich.; vice chairman, Daniel W. Hoan, mayor, Milwaukee, Wis.; treasurer, William C. Reed, councilman, chairman, Utilities Commission, Cleveland, Ohio; and secretary, Luke J. Scheer, 503 Waterboard Building, Detroit, Mich.

The advisory board is comprised of the following: For the State of Indiana, George W. Freyermuth, mayor of South Bend; Iowa, J. H. Allen, mayor of Des Moines; Kentucky, Neville Miller, mayor of Louisville; Michigan, W. P. Edmonson, city manager, Pontiac, chairman, Michigan division of the Cities Alliance; Minnesota, Herman C. Wenzel, commissioner of utilities, St. Paul; Ohio, William C. Reed, chairman, utilities commission, city council, Cleveland, chairman of the Ohio division of the Cities Alliance.

Mr. Chairman, I have a letter signed by John W. Smith, national chairman, directed to the chairman of your committee, with reference to his position on this bill, H. R. 4008. It states:

On behalf of the Cities Alliance, and as chairman of the natural gas committee of the United States Conference of Mayors, I offer the following recommendations relating to the Lea natural gas bill, formally designated as H. R. 4008.

That no changes shall be made in the title, nor in sections 1, 2, 3, 6, 8, 11, 12, 13, 15, 16, 17, 18, 20, 21, 22, and 23;

That changes be made, some of them very minor, in sections 4, 5, 7, 9, 10, 14, and 19, as amended section by section on the attached sheets; and that an additional section, here designated as no. 7½, shall be incorporated in the bill.

Gentlemen of the committee, I would like to point out that without a single exception all of these amendments were designed to broaden or clarify the functions that will be under the jurisdiction of the Federal Power Commission.

The amendments referred to in the letter of Mr. Smith relate to H. R. 4008, as outlined in his letter, and are as follows:

Amendment no. 1: Amend section 4 by adding a new subsection, to follow subsection (c) to read as follows:

"(d) Within six months from the date of the approval of this act each natural gas company which transports natural gas in interstate commerce shall file with the Commission true copies of all of its contracts—(1) for lease and royalty agreements of gas lands (unless excused by Commission for cause); (2) for the purchase of natural gas; (3) for the transportation of natural gas; and (4) for the sale or delivery of natural gas."

Thereafter each such natural gas company shall file promptly with the Commission true copies of any and all amendments, renewals, or new contracts on the matters heretofore enumerated.

Amendment no. 2: Amend section 5 by changing the section title as follows:

"Fixing rates and charges; determination of cost of production or transmission."

Thus the word "transmission" replaces the word "restoration."

Amendment no. 3: Add a new section, following section 7, to read as follows:

"SEC. 8. (a) The Commission shall establish regulations providing for the maintenance of accuracy and serviceability of all meters used in the control of operations of, and in the sale of natural gas by, natural gas companies under the jurisdiction of the Commission and shall provide tests for the determination of accuracy of such meters upon complaint or upon its own motion.

"(b) The Commission, upon complaint or upon its own motion, shall, from time to time, order such changes and improvements in equipment and operating procedure of natural gas companies under its jurisdiction, as it may determine, after investigation and hearing, are necessary to enhance safety in operation and maintain a proper quality of service within the limits of the capacity of the main pipe line and other major facilities installed by the owners."

Amendment no. 4: Amend section 9 by adding the word "production" after the word "the" and before the word "transportation" in line no. 6 of subsection (a).

Amendment no. 5: Amend section 10 by adding a new subsection to follow subsection (b) and to read as follows:

"(c) The Commission may, after hearing, determine the adequacy or inadequacy of the gas reserves held by any natural gas company, or by anyone for it, including its owned or leased properties or royalty contracts, and the Commission may, after hearing, determine the reasonableness or propriety of the inclusion of all delay rentals or other forms of rental or compensation for unoperated lands and leases, in operating expenses, capital, or surplus."

Amendment no. 6: Amend section 14 by adding the words "and municipalities," after the syllable "sions" and before the word "information" on line 6 of subsection (a).

Amendment no. 7: Amend section 19, subsection (a), line no. 5, page 27, by inserting after the word "practices", the following clause: "or concerning apparent violations of the Federal antitrust laws,".

Further amend section 19, subsection (a), line no. 7, page 27, by striking out the last three words, namely, "under this act."

Amendment no. 8: Amend section 7 by adding a new subsection, to follow subsection (a), and to read as follows:

"(b) Up to the capacity of its pipe lines and its ability to procure sufficient natural gas, it shall be the duty of every natural-gas company which is engaged in interstate transportation of natural gas, unless reasonable cause to the contrary is established in public hearings before the Commission, to furnish natural gas to any city or town applying therefor which is able and willing to make arrangements to extend a service line to any main of any such pipe-line company, and said gas shall be furnished at fair and reasonable rates without unjust discrimination. Applications by such cities and towns for natural gas shall have priority for consideration in order of the dates of the filing of such applications, but the Commission, if it finds a duty to service, shall decide, after public hearings, held after due notice, the order in which applicants shall be served, priority being given to those cities and towns which, by reason of all pertinent considerations, including cost of the service, number of inhabitants, and need of industry served, indicate the maximum public benefit from such service."

Amendment no. 9: Further amend section 7 by entirely eliminating subsection (c).

Mr. SCHEER. Mr. Chairman, in my statement I shall deal with this ninth amendment which requests the striking out of subsection (c) of section 7 of the bill.

Mr. Chairman and gentlemen of the committee, in approaching the subject of our final recommendation to your honorable body, I believe we are justified in pointing out that our proposed amendments, thus far, have generally called for a broadening of the authorities to be granted to the Federal Power Commission in regulating the interstate transportation of natural gas.

Now, if our judgment in those recommendations, based as it is upon a collective experience of many years in these matters, is sound and constructive, is it not also permissible for you to assume that our cities are also sound and constructive in this final proposed amendment, where we request that a limitation shall be placed upon the authority of the Federal Power Commission?

On behalf of the Cities Alliance and the natural-gas committee of the United States Conference of Mayors I have been instructed to urge most respectfully the complete elimination from H R. 4008, the Lea natural-gas bill, that portion of section 7 which is described as subsection (c).

After 2 years of vigorous effort to free the natural-gas industry from unlawful monopolistic restraint, the aforementioned organizations are alarmed by any possibility that the Congress might, inadvertently, give its blessing to the practices and philosophy of monopolistic control now dominating the production, transportation, and distribution of natural gas throughout this Nation.

In an honest and sincere endeavor to view section 7 (c) of H. R. 4008 in the most favorable light, we cast about in our minds for some satisfactory amendment, but the longer we considered such a compromise the more convinced we became that one cannot add sugar to iodine and expect the resulting concoction to be palatable.

As pointed out by the committee chairman, Mr. Lea, section 7 (c) was not incorporated in the natural-gas bill which was reported out favorably by this committee in the closing days of the second session of the Seventy-fourth Congress. It appears strange to us that such a section was not previously incorporated in proposed natural-gas legislation, during 1934, or 1935, or 1936, if it is really such an essen-

tial feature. So far as we know, there has been up to this time no reason for its existence in this bill advanced publicly by its sponsors.

For the sake of discussion, however, and in order to be fair in this matter, let us assume that section 7 (c) has been written into this bill for a number of reasons. We can think of only three which might appear at all plausible.

The first for this is: Someone might argue that section 7 (c) would tend to prevent a needless duplication of investment in interstate gas transportation facilities, thereby imposing upon the ultimate gas consumer an unnecessary burden in the rate base.

The answer, gentlemen, in my opinion, is that it would be impossible for any independent pipe-line company to enter a natural-gas market and sell its gas unless its wholesale price to the local utility or local industry was low enough, on a strictly competitive basis, to afford substantial benefits through lower prices to ultimate consumers.

If any such new competing independent pipe-line company offered gas at wholesale prices constituting cutthroat competition, the project would defeat itself before it ever was launched, because money for construction would not be available, due to a certainty of inadequate return. If, on the other hand, such a competing company drastically lowered its wholesale rate and still earned a reasonable profit, then the public might well regard prices charged by the established pipe-line company with genuine suspicion.

If this possibility of ruinous competition is advanced as a reason for including section 7 (c) in this bill, then may we not ask its sponsors to cite specific instances where such a competitive condition in the past has been detrimental to the public interest? On our past, we cannot think of such an instance.

The second reason: Let us assume that section 7 (c) has been incorporated in this bill to protect the industry's present legitimate interstate pipe-line investment against the period of so-called raids on occupied territory.

Our municipalities maintain that the restrictions of section 7 (c) are not required to defend entrenched monopolies against competitive raids, so-called. We contend that those powerful interests, which frequently control production, transportation, as well as distribution, are equipped only too well to protect themselves. It is easily possible for them today, and likely would still be possible under this bill, if enacted, to monopolize available gas acreage, dominate the sole means of financing an independent venture, and to hinder the rival project through their recognized political influence in city, county, and State, all the way from the gas well to the city limits. We do not admit that these great corporations need the strong arm of Uncle Sam to protect them.

The CHAIRMAN. Mr. Scheer, will you suspend for a moment?

Mr. SCHEER. Certainly.

The CHAIRMAN. Hon. Homer Hoch, for many years a member of this committee is present, and it is a pleasure personally as well as chairman of this committee to welcome Mr. Hoch this morning.

Mr. HOCH. Thank you.

Mr. SCHEER. Mr. Hoch, in this discussion, we are advancing what might be termed objectionable reasons for inserting in the bill a section to which we are opposed, and for which there has been no

reasons offered, up to this time, and since the reasons for the section have not been suggested we are trying to argue the point first. The discussion is rather lengthy because we supported another bill, and we are here supporting this bill because we feel that this bill will meet the purposes provided certain changes are made. And we were assuming that the amendments were in the bill and are offering the reasons which might appear for them, and the suggestions why the section should not be contained in the bill.

The third reason: Let us assume that section 7 (c) is contained here because its purpose, at least, is incorporated in similar legislation.

Our cities cannot accept that offhand observation as a valid argument in support of section 7 (c). Such a remark merely betrays a habit of thought. Let us not be a slave to precedent in considering this legislation. Our municipal officials call upon the sponsors of section 7 (c) to prove to this committee that such provisions, incorporated in similar acts, have truly been helpful to the American people. Let them prove, furthermore, that the lack of such provisions in still other acts has been detrimental to the American people. Furthermore, may we not ask the sponsors to show wherein this particular legislation requires the type of restrictions which similar legislation has required?

We wish at this point, Mr. Chairman and gentlemen of the committee, to set forth 10 reasons why the Cities Alliance and the Natural Gas Committee of the United States Conference of Mayors is diametrically opposed to section 7 (c) of H. R. 4008.

First. We oppose the granting of such restricting authority to the Federal Power Commission because we do not believe that grant of authority is necessary to an effective administration of this act. As ordinary citizens of this Republic we have a fear of creating a towering bureaucracy that feeds upon itself. A desperately cold man on a winter night might be willing to sidle up for warmth against a big well-tamed bear, if the opportunity permitted, but he would very likely lay awake all night, fearful that the animal might roll upon him and crush him.

Second. We oppose the inclusion of section 7 (c) in this bill because we believe it would merely duplicate, for the Federal Power Commission, that type of authority which is already effectively vested in cities, counties, and States. We do not believe that the regular United States Army should be mobilized to direct traffic at Pumpkin Center on Saturday night. At the present time, any potential pipeline competitor for a natural-gas market is compelled to obtain first a State certificate of convenience and necessity, before it can obtain a right-of-way for its pipe line across the State. As an instance of the effective check that can be placed upon such a competitor, I might mention that the Panhandle Eastern Pipe Line Co., holding a contract to supply Detroit, had to delay construction nearly a year before it could obtain such a certificate from the Illinois Commerce Commission to cross this State.

Now, after a State certificate has been obtained, another permit to cross under highways must be obtained from county authorities. Such a permit was denied to an independent pipe-line company seeking to enter Terre Haute some years ago, until an appeal to a Federal court had been threshed out. Although the service was ultimately

established, we do not know whether the ultimate consumer received much benefit from the lower costs, inasmuch as approximately seven holding companies were at that time superimposed upon the local Terre Haute gas utility.

After State and county certificates are obtained, a pipe-line company must obtain a permit from a municipal council before it can extend its lines into a city to supply industrial customers. There, again, this potential competitor is subject to harassment and delay.

If, in addition to obtaining State, county, and city permits, this potential rival must soon obtain a Federal certificate, may we inquire whether ultimately he will be compelled to appear before the World Court or the League of Nations in a like cause?

Third. We ask the elimination of section 7 (c) for the reason that it improperly assumes that a Federal bureau here at Washington has a better knowledge of just what constitutes "public necessity and convenience" with respect to providing a competing natural-gas supply than do the cities, counties, or States which are directly affected. As mere citizens we like to believe that in future years we shall still be citizens and not "subjects", and that we shall not some day be reduced to the status of, lo, the poor Indians, who look to the Great White Father for a decent opportunity to exist.

Fourth. Our organizations are opposed to section 7 (c) because it can severely handicap a city's effort to contract for a competitive natural-gas supply as a basis for undertaking municipal ownership of a local gas utility or even the building of a competing distribution system, if the citizens, in the exercise of their sovereign rights, should so desire. At this point may we remind you gentlemen that establishment of a reasonable "city gate" price does not guarantee the passage of such benefits to the consumer in the form of reduced rates.

Fifth. We contend that section 7 (c), if permitted to become law, would promote indirectly a waste of America's natural-gas resources, because it would shut the door of outlet to independent producers, who, in retaliation and self-protection, would continue to sell their gas to carbon-black plants and gasoline stripping plants, and for other wasteful commercial processing. We would like to emphasize the fact that in recent years that the only single instance wherein one great group of independent producers was provided with an independent outlet occurred in 1930, when the construction of the Panhandle Eastern Pipe Line Co. was started toward Detroit. That, of course, being an independent enterprise, was branded by the monopolists as a "raider." We want also to mention that, in the absence of another great pipe line from southwestern Kansas to Detroit, the carbon-black industry is locating its first plant in the Hugoton field at this time.

Mr. PETTENGILL. Where is the Hugoton field located?

Mr. SCHEER. In southwest Kansas, just north of the Texas Panhandle field.

Mr. PETTENGILL. Yes. I have been there.

Mr. SCHEER. Sixth. Our cities are opposed to section 7 (c) also because it would impose unfair and rigid requirements upon an industry which is still young, and growing lustily. Even under the best circumstances, the administration of this proposed act would require a maximum of good judgment, fair play, and flexibility in application. If this bill should be enacted, the Cities' Alliance expects to offer every cooperation in getting a sound administration under way. If experience indicates that such authorities outlined in section 7 (c) are required, we shall be the first to recommend such extension of powers. In the meantime, is it wise to clothe a toddling youngster in an old man's pantaloons and expect him to run a race against his older brothers—the oil, the coal, the electric-power industries?

Seventh. We oppose section 7 (c) because its unfair prohibitory nature conflicts with the American ideal of legitimate freedom of opportunity. Despite the fact that a combine of powerful holding corporations sought to destroy him, despite the failure of the Attorney General to enforce the Federal antitrust laws in his behalf, a young man of 34 years undertook the construction of the great Panhandle Eastern Pipe Line Co. back in 1930. His name was Frank P. Parish, and he finally succeeded in assuring its financial success in 1935 by negotiating a 15-year contract to sell natural gas to the Detroit City Gas Co. We need to keep such opportunities open to the young America of tomorrow.

Suppose, for example, Congressman Mapes, that Michigan's natural-gas fields were located along the Michigan-Ohio border. Do you realize, gentlemen, that before Michigan capital could transport such gas to a Michigan market—to Detroit, for example—the project's sponsors would be required by section 7 (c) to obtain a certificate at Washington, even though both the city of Detroit and the Detroit City Gas Co. favored the proposition? How would the people of Michigan, or of any other State—the farmers who owned the gas lands, the leaseholders, the drillers, the investors, the gas consumers—view such a situation?

Eighth. We ask the elimination of section 7 (c) for still another reason. It permits an established pipe-line company, serving a particular market for wholesaling gas to the local utility at the city limits—it permits that pipe-line company to stave off threatened competition merely by expanding its facilities and bringing in additional natural gas. But secton 7 (c) does not require that such additional supply shall be brought in at a price in competition with the proposed independent supply.

Ninth. Our cities object to section 7 (c) because, even under a favorable administration of the act, independent pipe-line companies seeking to respond to our cities' demands for additional natural gas—a demand which the entrenched monopolies are ignoring—would be subjected to unfair hazards incident to the delay in obtaining a Federal certificate. During such a period of waiting his stronger rival, already in possession of the market, could attack the independent project by undermining his financing, by monopolizing available gas reserves, and by secretly alienating his potential or contracted customers. The fact that such activities might be in violation of the Federal antitrust laws would not, in our opinion, restrain the established pipe-line concern from this type of so-called self-defense against "raiding."

Tenth. The Cities Alliance and the Natural Gas Committee of the United States Conference of Mayors beseeches the elimination of section 7 (c) from H. R. 4008 for this tenth and final reason:

It offers to powerful and wealthy pipe-line companies an endless opportunity to frustrate independent enterprise, frustrate the commission, and frustrate the public's own rate-reduction efforts by re-

sorting to litigation—to a type of litigation which is not available to them at this time. Let us assume that a Federal certificate has been granted to an independent rival. Is it not a fact that the granting of such a certificate would be subject to a further appeal to a district Federal court, and possibly even to the United States Supreme Court? By the time a decision was reached, a potential competitor would be destroyed by the ravages of uncertainty and delay, legitimate investments would be jeopardized, and domestic and industrial consumers might be denied a legitimate right to obtain natural-gas service at a reduced rate.

In brief, Mr. Chairman and gentlemen of the committee, our cities are opposed—yes, indignantly opposed—to the retention of section 7 (c) in H. R. 4008, better known as the Lea natural-gas bill.

That, Mr. Chairman, states our position on the one amendment.

There is one other amendment which is quite important to us, and if you feel disposed to give me the additional time we can go into it now, but it deals with the right of the cities to purchase gas from a pipe line, which right, we believe this bill in its present form, if enacted, would prevent. This bill in its present form requires that the pipe line sell gas for distribution in the city. What about the cities that want to serve its citizens but who cannot secure from the pipe-line company the gas which they desire because of some objection on the part of the company? What opportunity has a city to bring in natural gas in a sufficient supply to meet demands, not with the idea of establishing competition, even though it may be used as a logical weapon to bring about a reduction in rates?

The CHAIRMAN. To what section do you refer?

Mr. SCHEER. This is section 7, subsection (a). We have proposed no change in that subsection, but we propose an additional subsection. If I may, I will read again the proposed section, which has already been offered for the record. We propose that section 7 be amended by adding a subsection following subsection (a), to read as follows:

(b) Up to the capacity of its pipe lines and its ability to procure sufficient natural gas, it shall be the duty of every natural-gas company which is engaged in interstate transportation of natural gas, unless reasonable cause to the contrary is established in public hearings before the Commission, to furnish natural gas to any city or town applying therefor which is able and willing to make arrangements to extend a service line to any main of any such pipe-line company, and said gas shall be furnished at fair and reasonable rates without unjust discrimination. Applications by such cities and towns for natural gas shall have priority for consideration in order of the dates of the filing of such applications, but the Commission, if it finds a duty to service, shall decide, after public hearings, held after due notice, the order in which applicants shall be served, priority being given to those cities and towns which, by reason of all pertinent considerations, including cost of the service, number of inhabitants, and need of industry served, indicate the maximum public benefit from such service.

Gentlemen, I want to point out to you that in this country approximately 75 cities now distribute gas as a municipal service. The number is not larger mainly because there is no demand felt for that kind of public service; cities have electric lights for lighting their streets, and therefore are more likely to furnish electricity if they do not light their streets with gas, and therefore there is no demand from them—on the part of the large centers of population to build a gas plant; they build light plants, but there has been no great demand on the part of the population to ask the city to sell gas from a municipal plant. But a great many cities may want to

engage in that activity in the future. And there have been a number of protests made by such cities who want to build gas plants, or pipe lines, that they have not been able to secure gas from the pipe-line company passing through or near their town. I have in mind one particular instance that I am familiar with, that of Fulton and Fayette, Mo., that tried to secure local gas, through some sort of an arrangement which they had made with the utility operating in that State and in that area when they tried to secure gas from the pipe-line company they could not do it because the company said they had made a prior commitment to the utility; however, at that time no permission had been given from these two towns to any utility to secure that gas to the municipality. However, they refused to connect with this line and the Missouri Public Service Commission now has that case in the courts, and while I am not familiar with how it has turned out, the mere fact that such a condition exists indicates why this legislation is necessary.

If Mr. Booth of the Illinois Commission was here, he could tell you of the village of Findlay, Ill., where they asked to make some sort of an arrangement to connect with the pipe line that goes into Chicago, and they were denied, and the Illinois Commerce Commission, I understand, is taking that matter to the courts, and I do not know how it turned out, because we cannot keep track of all these things. We look at the facts, which are significant and where an effort is made to prevent the securing of such service on the part of a city, and see what can be done where such a demand is made. We are interested in that.

With reference to the other sections, and the other amendments that we are proposing, I can say definitely that they will very definitely extend the Commission's power, so we are not up here trying to put the Commission, in any way, a strait jacket. For example, we are suggesting an amendment in section 10, which would be another subsection to follow subsection (b), which subsection would read as follows—and this is designed to prevent great pipe-line corporations from acquiring more acreage than is necessary to supply the consuming public which it serves, and so far as the proposed amendment is concerned, would keep them from passing on the charge of carrying that property to the consuming public. This subsection would read:

(c) The Commission may, after hearing, determine the adequacy or inadequacy of the gas reserves held by any natural-gas company, or by anyone for it, including its owed or leased properties or royalty contracts, and the Commission may, after hearing, determine the reasonableness or propriety of the inclusion of all delay rentals or other forms of rental or compensation for unoperated lands and leases, in operating expenses, capital, or surplus.

Now, gentlemen, I would like to impress upon you the fact that we do not ask you to compel these corporations to divest themselves of any excess of acreage they may hold. We cannot ask you to go so far as to prevent them from making the purchase, if they want to, but we can ask that provision can be made whereby the Commission can see that the cost of carrying those excess acres, that are not necessary in the public interest, shall not be taken into consideration in passing upon the question of what are proper rates to be charged the consuming public. In other words, those excess acres shall not be taken into consideration in passing upon rate cases.

Mr. Reed, who is here from Cleveland, can offer you specific examples in the State of Ohio, which is the largest consumer of natural gas in this section, and I am going to ask him to speak to you on this matter.

Now, if there are no other questions you want to ask on that, I am going to pass to an amendment which we propose to section 4, which will be amended by adding a new subsection to follow section (c).

The CHAIRMAN. Before you leave that subject will you restate the remarks you made in reference to the 75 cities? We do not quite understand what you referred to in mentioning the 75 cities.

Mr. SCHEER. Well, I think my statement was with reference to the fact that in the State of Ohio and in the State of Michigan we have in certain localities a problem that it is impossible to solve——

The CHAIRMAN (interposing). I had reference to your statement about the distribution of gas in 75 cities.

Mr. BULWINKLE. You said that 75 cities had their own gas.

Mr. SCHEER. Yes; or wanted it.

Mr. BULWINKLE. You did not say they have it now?

Mr. SCHEER. I say that they could not get the pipe-line service connected with some of them. Some of them are operating their own gas plants, and some day may want to make a connection with pipe lines to get natural gas. Of course, there are some sections where natural gas will not be available. Up in New England, for instance, it would not be.

Mr. PETTENGILL. These 75 cities are mostly artificial gas users, are they not?

Mr. SCHEER. I do not believe that applies to many of them. Out in Kansas, for instance, they have a natural-gas municipal plant. It is, I would say, fairly evenly divided, but that division means nothing at this time, because the balance of them, particularly with respect to natural gas, or artificial gas, so far as that is concerned, may want to have a natural-gas connection later on. I understand there are about 5,500 communities that receive natural gas, and 3,000, about that, receive artificial gas. Of course you must bear in mind natural gas can be distributed where it is not profitable to distribute artificial gas; natural gas can be sold and would be used in many places where artificial gas is now being used.

Mr. HALLECK. May I ask the witness a question?

The CHAIRMAN. Mr. Halleck.

Mr. HALLECK. Do I understand that your association favors this bill generally?

Mr. SCHEER. We favor the principle and the need for legislation of this type, but we feel that it is not necessary to go as far as the pending bill goes; we do not feel it is necessary to pass a law that will take away many of the things we have been working for locally.

Mr. HALLECK. Is it your idea that the control which this bill seeks to confer treats the natural-gas industry as a public utility?

Mr. SCHEER. No; I do not think so. The public-utility classification for pipe-line companies is what you might term the common carriers; that is my understanding, and not the single pipe-line company that is not handling a commodity generally. You refer to the common carriers. But when you get into the individual companies you are talking about another question.

Mr. HALLECK. Well, what would be your idea as to the authority of the Federal Government to control this industry, supposing that it was a public utility and that you were dealing with public property; how would you justify that control?

Mr. SCHEER. Well, we feel that what we are asking for this industry is that it operate for the benefit of the greatest number of people and that much of the regulation has even reached down into the matter of regulating the natural-gas industry for the welfare of the general public, and it is upon that authority that you are enabled to regulate the pipe lines if you make them common carriers, if that answers your question.

Mr. HALLECK. I understand the fundamental purpose of the act is to bring about a reduction in the rate of gas supplied consumers.

Mr. SCHEER. Concededly, of course, when the opportunity is not given to furnish the gas no reduction is possible, and they could not go into that.

Mr. HALLECK. At least, that was the underlying reason and interest of your association, was it not?

Mr. SCHEER. That is right. We are organized for securing lower rates.

Mr. HALLECK. As I understand the purpose of your organization in respect to section 7 (c) is that you feel that power will not be sufficient to accomplish the purpose and you want to reserve the competitive practices?

Mr. SCHEER. That is right. We feel, in this industry particularly, it deprives the States of the right to regulate by competitive methods.

Mr. HALLECK. Is it not true that, generally speaking, the practical justification for governmental regulation of utilities follows from the fact that it is claimed certain privileges, what may be termed a governmental monopoly through franchise by the Government is conferred, the acceptance of which in turn subjects them to a measure of governmental control and regulation, particularly as respecting rates?

Mr. SCHEER. That is true.

Mr. HALLECK. These companies, if they are to be controlled as contemplated in this character of legislation, should they not have some assurance that they will not be crucified by some of the practices to which you have referred?

Mr. SCHEER. Mr. Halleck, I should say they should be subject to Government control; but let us define what we mean by Government control, whether you refer to the Government of the United States or the laws enacted in the States, or regulation through local utility commissions, or people having the power conferred upon them to act for the State. The States, however, do have the power, particularly in this direction, and to give Federal power where we feel there is sufficient power vested in the similar restrictive authority in the local body to regulate the utilities in the States we think unnecessary.

Mr. HALLECK. Well, while we are on that point, of course, I agree with you on the matter so far as I understand the centralization of control in Washington is concerned, but, as I understand it, the very purpose of this bill, the reason for this bill, is the fact that, insofar as interstate activities are concerned, they are not subject to State control.

Mr. SCHEER. That is true.

Mr. HALLECK. Well, of course, this bill does not pretend to go any further than interstate control.

Mr. SCHEER. No; but it does take away from us a very necessary power which we have at the present time. It attempts, offers an entirely different direction from which we have been operating in the control through the States, and increases the power of the Federal Government while taking away the regulatory power of the State government.

Mr. HALLECK. Let me ask this further question.

Mr. SCHEER. And in turn, independently of what action the State regulatory body may take, it permits the Federal Government to conduct an examination to determine whether a pipe-line company would be authorized or justified in coming into a market that may be offered.

Mr. HALLECK. Is it not true that most of the States already have laws controlling the intrastate business of natural-gas companies?

Mr. SCHEER. Well, some States more and some less; some practically none. I think Indiana is very weak in that respect.

Mr. HALLECK. Is it not also true that in those States that have undertaken to deal with utilities they have a similar provision to this section 7 (c) as it applies to intrastate business?

Mr. SCHEER. Yes; they have the same authority which this bill seeks to make effective over the interstate business.

Mr. HALLECK. Now if this bill is to deal with interstate activities just like the States have the power to deal with intrastate activities, why should not that same authority be vested in the Federal Power Commission as it has heretofore been vested in the State authority?

Mr. SCHEER. Well, Mr. Halleck, we assume that legislation of this character is designed to correct—I believe we can assume that it is designed to correct abuses that now exist in this industry. It is the very judgment of the local authorities, in the power which they now have over such pipe lines, that they can require them to supply adequate service wholly within the State; and the local authorities can say what is adequate service.

Mr. HALLECK. Of course I can understand that on the question of lowering rates where there is no competition, the assistance through Government regulation which would affect a revision of the rates downward would probably be helpful to the consumer more than to anyone else.

Mr. SCHEER. It would help the producer also.

Mr. HALLECK. But it occurs to me that we have also some obligation to these industries which have already invested their money in the construction of pipe lines and which may be adequate to supply the markets available.

Mr. SCHEER. Well, Mr. Halleck, you are assuming that there would be no opportunity to protect the others who are interested in the industry. Now we do not believe that would be the result, that ruinous competition would result. Now, in the last 10 years, certainly, nobody could contend that we needed to give them that help. I can refer you to a case recently where they were securing money to build a line into the markets that are available. And just now they are challenging the Federal Power Commission's right to place any limitation upon them.

So far as supplying the market with gas in the city of Detroit, Mich., is concerned, there is the one pipe line which comes some 1,200 miles from Texas and the pipe-line company has a contract to supply 90,000,000 cubic feet of gas daily to the consumers in Detroit. And at the present time the consumption of gas in Detroit, under rates which would be possible, if you put them into effect, could be as high as 200,000,000 feet, cubic feet per day.

This bill would mean freezing; it would mean giving priority to that company, under the present set-up, to build another line into the city of Detroit, which would mean a second investment, because of the present arrangement it has with the city of Detroit, which would in effect, as I say, freeze the present rate and put into the hands of the company now operating the power to serve that territory without competition. Now, I do not mean that we should look upon it purely from the standpoint of building another pipe line, but I think a little competition between pipe-line companies would not hurt. I do not mean the kind of competition carried on between the pipe-line companies and some individual, where they can ruin the small company, the small investor, run them out of business. But, we are worried about this situation despite the fact that the company which supplies gas in Detroit is operating under the direction of a trustee appointed by the court, by the Federal court, as a result of our agitation, the Federal court appointed a trustee under whose management the local company operates, resulting from the fight under the antitrust law. And, I want to dwell on that just a moment to show you how we proceeded in these matters.

In 1930 this particular pipe-line company succeeded a couple of concerns that had been in business about 8 years. It was not one of the big 4, or the big 10, or the big 25 or the big 50; it had no production, no acreage. But we saw that down in Texas there was a vast acreage which was under lease with the big pipe-line companies. Now, those big pipe-line companies were draining that gas from the land of other people, without paying those people who owned the land which was not under lease; and there were a number of them, farmers, and others, and this concern went in there and secured enough acreage to provide a supply of gas over a period of many years. The people in Detroit had tried to secure gas; and of course there was a market, but the local gas company had not brought in any natural gas from the Panhandle field of Texas. So, after they had succeeded in getting enough gas acreage so they would be justified in building a pipe line to supply Detroit with gas, they went to the public on that proposition, and by June of 1930 they had a sufficient amount of common stock sold to finance the construction of a pipe line. And, on June 15, according to the testimony—and I am merely repeating what was given there—the man who had been successful in securing this acreage had reached the point where he had offered stock and secured enough funds to construct the line, was told by the utilities combine, that is, by the big four, the Columbia Gas & Electric, Electric Bond & Share, and possibly others, the North American Co., that unless he sold his gas acreage to the Standard Oil Pipe Line Co., or to the Cities Service people and take the money and invest it in the minor interests of another pipe-line company, which was then being constructed to carry gas

to the Twin Cities, his market would be raided and his stock put up under forced sale.

He asked for a truce and time to consider the proposition, and asked for an appointment with one of the so-called big interests in New York on the following Monday, but by the time he got the train to New York the price of his stock had so dropped, the raid had already been made, and the price had dropped from 36 to 15, and the plan which he had financed through the sale of common stock was permanently and effectively lost and the whole property of which about 200 miles of pipe line had been constructed to connect up with this acreage, had been threatened, and the money which he had secured from people who had bought stock, who felt that this was a good contract was put in jeopardy and the people were in danger of losing all their money, and he was faced with absolute danger of bankruptcy. In order to avoid a total loss this particular company made a sale of half of its interest in that property to the Columbia Gas & Electric Co. which was interested at that time in bringing a supply of gas into the Ohio market. The Columbia Gas & Electric Co., I will state, and the Electric Bond & Share Co., are in the big-four group in the industry. After acquiring this half interest the Columbia Gas & Electric Co. also acquired the bonds which had been floated through the National City Co. and which had been meant for distribution to the public.

Their next step was to put their own management in charge of the line. And whenever this independent producer, for example, the partner who had been successful in securing this large acreage, made suggestions to the management that there was a market for natural gas in certain communities, where the supply was not adequate, the reply made to him was that they could not sell gas in competition to a utility that belonged to the Standard Oil; they could not sell in a market that was supplied by the Cities Service Co., or any other of the big four.

And, finally, and due to the restrictions upon the earning capacity of the Panhandle Eastern, because the distribution was the main source of revenue, supplying gas for distribution, and as a result of that the company was near bankruptcy through lack of earnings and because of the impossible situation under which they were operating they could make no revenue, and the partnership arrangement was not productive of any income. The final outcome of this was that before very long a proposition was made whereby the Columbia Gas & Electric Co. acquired 100-percent control of that property and in return did buy up the former partner's interest in some gas connection which had enabled him to pay off some of the individual obligations and the result was that the small stock owners lost their interest.

And at that time Senator Nye here in Washington learned the facts from a newspaper reporter that I know. He raised quite a stir and threatened to produce the facts, and said that he was going to give the facts to Chairman Wheeler, of the Interstate Commerce Committee, and see what could be done about it.

At that time the facts were laid before the President's Conference of Mayors as being a problem they should deal with. Now, at that time a suggestion was made at that conference—and I do not intend to go over all of this—except to say that a suggestion was made that a group should be formed of interested cities to see what could be done. And, the Cities Alliance was organized as a result, and before it was organized we came down here to Washington in December of 1934, and asked Senator Wheeler, since this was a matter of public moment, what was necessary to be done, and as a result of that conference he told us what he thought should be done, for us to get together a group of cities in the different States that were interested and work out some plan. He suggested that the city representatives should meet in a conference, study the problem of the cities with reference to the use of natural gas and bring in a program of relief.

Our first program of relief was to get the antitrust laws enforced, and we insisted that the antitrust laws were sufficiently effective, and in that way the Columbia Gas & Electric Co. was compelled to restore the former partnership to fully half—a three-eighths interests which had been taken from the Panhandle Eastern, and compelled to divest itself, insofar as effective control of the management was concerned, and was compelled to divest itself of stock, and a Federal trustee was appointed by the court, as I have heretofore indicated, and put in charge of the operation of the company.

Now, in spite of the fact that we have had this experience insofar as securing the appointment of a trustee is concerned, and with respect to taking this one pipe-line company into Detroit, we still are fearful we may have to go through that same procedure again, and we believe that even though we have succeeded in getting the court to appoint the management of this particular company, and it is being managed in effect by a trustee of the Federal court, notwithstanding that fact, we feel that there should be left an opportunity to have another pipe-line company come into Detroit if the local utility commission feel that it would best serve the public, without having to come down here and ask some Federal authority whether or not that should be done, because during the time it takes to do that, a lot of things can happen in an independent enterprise. That is why I am here asking for you gentlemen to consider this amendment.

Mr. EICHER. May I ask a question?

The CHAIRMAN. Mr. Eicher.

Mr. EICHER. Mr. Scheer, do you believe that the cities you represent would be willing to surrender the control they now have over duplication of public utilities within their own borders?

Mr. SCHEER. Within their own borders?

Mr. EICHER. Yes .

Mr. SCHEER. That has been surrendered to the State commissions already.

Mr. EICHER. Is that true in all States?

Mr. SCHEER. Well, it is true, except in some States the local utility commission has not surrendered its jurisdiction over the rates to the State commission. The State commission cannot come in and set rates in the city of Detroit, for instance. And there are many cities throughout the State of Ohio, for example, where they set the rate, fix the rate on gas and electricity, but if the utility company is not satisfied it can make an appeal to the Ohio Utility Commission, and that is where we stand now.

Mr. EICHER. Do you think there is need for some public control of this nature?

Mr. SCHEER. Yes; there is need for control of this nature; control is necessary to make it effective, the control which I say is outside

the jurisdiction of the State. We have no objection to the Federal Power Commission exercising control over the interstate movement, and points outside the State which cannot be reached by the local utility commission, but we do not feel that they should come into the local jurisdiction or exercise any control that is now fully governed by the local utility commission; we feel that we have ample protection on that and that the public is adequately protected.

Suppose we wanted a competing pipe-line company in Detroit and we went to the Federal Power Commission and they said there should not be one; or that the Federal Power Commission should ask what the existing facilities were. It would be necessary for us, or for the people interested in the new pipe-line company, to come down to Washington, with the resulting loss of time, going into the question of rates, and so forth, to convince the Commission here an additional line was needed. This bill takes away from us the authority under the very theory of giving us something; we say we do not need that to assist us.

Mr. HALLECK. Just what way does it take away from you any authority?

Mr. SCHEER. It takes away from us the authority to say whether anyone can come into that market and sell natural gas, and the rate can be set because the pipe line crosses State lines.

Mr. BOREN. May I ask a question, Mr. Chairman?

The CHAIRMAN. Mr. Boren.

Mr. BOREN. Mr. Scheer, in relation to your statement a while ago that referred to the competition that broke the back of the small company of which you spoke. Would not this bill in effect help produce the very thing you have referred to here, if Congress passes this measure? Will it not help to maintain that situation especially where they are already established?

Mr. SCHEER. It will, absolutely. This bill in its present form, if it is not amended, will help, continue to help do that very thing, if that is an answer to your question.

I think it is very vital where you have an industry dealing with a product such as we have of natural gas; we are in a new field, which is based upon exploration of a natural resource, which is exhaustible, and which when exhausted can never be replaced. You have a different situation from that involved in hydroelectric power on streams that will run for two generations, or may be for centuries, where you can build the plants on a permanent basis. But in the Texas Panhandle field if you waste the supply of natural gas, and it has and is being wasted, instead of getting it to a market which is a reasonable means of conserving that natural resource, you are wasting a resource that cannot be replaced. Conservation, as I understand it, is allowing the resource to be used and enjoyed without loss.

Mr. EICHER. You do not have the confidence that the Federal authority would give you the right that you say you want reserved?

Mr. SCHEER. We say that section 7 (c) does not, and we say that we do not want to have to come down here and secure permission from a Federal agency when we believe that the State and local commissions are better qualified, more capable to deal with the matter within the State and that the industry itself is better qualified to regulate itself and we do not want a Federal commission making regulations for matters purely within the jurisdiction of the State. We are not objecting to the bill itself, but we do want these amendments.

Mr. PETTENGILL. Mr. Scheer, the natural-gas company already in the field does not have any Federal license or certificate of convenience and necessity, has it?

Mr. SCHEER. No; no.

Mr. PETTENGILL. Well, are you in doubt about it?

Mr. SCHEER. I am thinking of the little regulations that you have to comply with with respect to State commissions, for example, or the local utility commissions.

Mr. PETTENGILL. I am not talking about that. I am talking about the situation, so far as the Federal Government is concerned, as it affects natural gas and the marketing of natural gas; the company you referred to has no certificate of public convenience and necessity.

Mr. SCHEER. No; it has not.

Mr. PETTENGILL. And the bill in that respect, as far as affording the possibility of future competition is concerned, did not exist at the time?

Mr. SCHEER. That is true.

Mr. PETTENGILL. So that section 7 (c) as now proposed, to give you Government protection, did not exist at the time it made its investment?

Mr. SCHEER. No; that is not true.

Mr. PETTENGILL. Why?

Mr. SCHEER. Section 7 (c) really grants permission only to companies which seek to compete with another company.

Mr. PETTENGILL. I do not think you understood my question. I say that the existing company, by virtue of section 7 (c), if its purpose is to give protection, gives a protection which they did not have at the time of the construction of the pipe line.

Mr. SCHEER. It is giving a protection which I do not feel is needed, and in effect is imposing a monopoly upon the industry.

Mr. BOREN. Mr. Chairman.

The CHAIRMAN. Mr. Boren.

Mr. BOREN. Also that the smaller company, as in the case you mentioned the district court may find there is need for extension, the need has grown up as a result of industrial activity and could come in as a competing company; and while, as you say, they need not be brought in, in an attempt to have competitive rates they may come in and force the smaller company out. Now, suppose, as you suggest, the committee should delete section 7 (c), just what safeguard would there be left against such competition?

Mr. SCHEER. It is safeguarded by the fact that the Federal Power Commission, by virtue of its control of rates, can keep that cutthroat composition under control. After all, this Power Commission can keep the company from selling the gas at too low a price. While it is true they have the right through granting the power to sell gas, they can refuse the certificate of convenience and necessity just as much because too low rates would result as could because the rates are too high. I think there is an effective control without the necessity of a certificate.

Mr. BOREN. You think the heart of the bill should be to give the Federal Power Commission the controlling basis for rate development in the interstate division of the traffic, and let that be the sole basis

of its control rather than any idea that its control might affect the competitive question existing within the State?

Mr. SCHEER. That is right; and we feel further that the Federal Power Commission should have authority to make investigations which the local utilities might not be able to make, and in that way could serve the purpose just as well. For example, take the case which I mentioned a while ago, where the question arose as to the disclosure of how much gas acreage the company has that is not being operated and which the local commission might want to know in order to determine what should be a proper rate to be charged for the gas that is sold at retail. The local commission cannot go into another State and get that; but, if that can be supplied by the Federal Power Commission through its investigation, that would meet the purpose, and you would have to have that power because the gas is carried across State lines.

Mr. HALLECK. May I ask a question, Mr. Chairman?

The CHAIRMAN. Mr. Halleck.

Mr. HALLECK. Is it not true throughout the whole history of expanding governmental regulation and control of public utilities that a provision similar to that set forth in section 7 (c) has been applied?

Mr. SCHEER. I think that is generally true.

Mr. HALLECK. And has that not been justified, on the proposition referred to by Mr. Pettengill, to the effect that when additional restraints are placed upon a utility, in return for that, additional protection should be given?

Mr. SCHEER. Well, we mentioned, Mr. Halleck, the fact that in this instance it does not apply because there has been no showing that the regulation asked for is needed; they have not proven the point that it is necessary to give that power to the Federal Commission. I do not think we can compare natural gas with the production of electric power, for instance, by the use of water.

Mr. HALLECK. Well, fundamentally the natural gas industry seeks to supply power and light in the same manner as the electric industry seeks to supply power and light; is that not true?

Mr. SCHEER. Yes, sir; based upon this difference, if you take into consideration this difference, that basically natural gas is a resource which is exhaustible, and based upon the potentiality that nothing new will be brought in which can entirely and absolutely upset the status quo in any particular locality. There are a lot of things where it is entirely different from such regulations as have previously existed or been established.

Mr. HALLECK. Well, of course, in so far as electric energy is supplied by steam plants, there would be no difference, because the source of power is expandible.

Mr. SCHEER. It is much easier to determine how much coal costs in a locality, or any particular field than it is to find out how much gas, or how much surplus there is in the depths of the earth.

Mr. HALLECK. Are you a little suspicious of the effectiveness of the Federal Government in reducing rates to the proper point?

Mr. SCHEER. We think that the Federal Government can be of great help, but we think that occasions may arise where the local commission would be checked, under the provisions of this section, 7 (c) of this bill. That is why we are opposed to it.

The only change, important change we have asked is with reference to that particular section which we have discussed.

Mr. HALLECK. I want to say that my mind is open on it; I am simply trying to find out the situation.

Mr. SCHEER. The point is, gentlemen, we feel that the local commission is in better position to establish the facts with reference to rates on natural gas, or the need for allowing competition to come into a territory than can be known without bringing all the facts to the Commission in Washington. What possible advantage can come through such a provision if it is enacted for the purpose of seeing that the industry does give us proper rates? Why should it be necessary to come down to Washington, have a hearing here as to what should be done in this or that particular instance, with all the complicated data that would have to be presented.

Mr. PETTENGILL. One other question.

The CHAIRMAN. Mr. Pettengill.

Mr. PETTENGILL. My whole thought awhile ago in asking you the question regarding section 7 (c) was whether it tended to give an advantage in a monopoly that already existed. But my mind is open, and yet the problem as I see it is this: A company is already supplying the market, without either the benefits of section 7 (c) and also without the hazard of having to supply that gas at a rate which was fixed by the Federal Commission, but my question was that if the Federal Government assumed to impose a burden, by controlling the source of supply and the price charged for it then the question arises whether or not the Federal Government should then give the benefit of some degree of protection against further competition.

Mr. SCHEER. Let me answer the question in this way. I think the question itself is based upon a theory, but statements which we have made here are based upon our actual experience of what has happened, and we say that there has been no occasion for requiring a certificate of convenience and necessity. We say that this can be done without this provision in the bill, and without requiring such a certificate. Our position, from our experience, is that we do not need this provision in the bill. We feel that the local commission can more readily determine whether a new gas line is needed in a particular field.

Mr. COLE. May I ask a question there?

The CHAIRMAN. Mr. Cole.

Mr. COLE. You are speaking of the city of Detroit, where I understand you to say there is one interstate line delivering the gas to the city gates?

Mr. SCHEER. That is right.

Mr. COLE. If this bill passes it would have the effect of giving that company, the existing line, a certificate of necessity, and from then on the rates charged at the city gate would be a just and reasonable rate, as required by this commission, would it not?

Mr. SCHEER. Yes.

Mr. COLE. Then what more could you expect; assuming now that that company would be required to furnish gas at the city gate, based upon rates fixed by the Power Commission, under the authority of this bill, fixing a reasonable rate. What could you hope to accomplish by bringing in competition with that company, if the charge made by the company now serving the city is reasonable and fair?

135605—37——6

Mr. SCHEER. Well, in this case, Mr. Cole, while there is no competition, another pipe line could supply additional gas which the present company is not supplying. There is no competition inside the city. But we might need another pipe line to supply the industrial enterprises that may want to increase their usage of gas; and besides that, no one can say that in the future the local commission would not be justified in taking into determination the facts, in fixing a rate, and enter into the cost of building a new pipe line, or the consumers may want to increase their supply, or we may want to take advantage of the new development in pipe-line construction and the lesser cost in bringing gas to the city gates, which would have their effect upon a charge at the gates.

Mr. COLE. Well, is it not provided in this bill that the Federal Power Commission, in determining what is a just and reasonable rate at the city gate, could require the existing company to furnish that information, improve its facilities, or do anything else in reason that might reduce the cost of gas; that could be done under the provisions of this bill, could it not?

Mr. SCHEER. Well, I know, but Mr. Cole, there is a certain physical limit; a certain proper and honest limit to which the Commission can go in organizing an extensive facility. I say this, for example: Here is a line which comes to Detroit, which is 24 inches, from Texas to southeastern Kansas; 22 inches from there to the middle of Illinois; it is 20 inches from there to about the middle of Indiana, and 22 inches again on up to Detroit.

Now, to bring in more gas to Detroit and expand those facilities, it might be necessary to lay loops of pipe line from the end of the 24-inch line up to the end of the 22-inch line in central Indiana. And, to bring in more gas, that may not be, from an engineering standpoint the smartest thing to do. It may be better to build an entirely new line, because you are just piling investment on top of investment and the same ratio of producing more gas and producing more earnings in the case of that kind may not obtain.

Mr. COLE. And there would be the necessity for the Federal Power Commission investigating it, to determine whether that should be done.

Mr. SCHERR. Or, whether a new line should be built.

Mr. COLE. Yes.

Mr. SCHEER. Yes; but why say to that pipe line, "You shall bring in a new line."

Mr. COLE. It seems to me that you want a great deal of help in your existing situation; really, that is what you are advocating.

Mr. SCHEER. We do not need it at Detroit.

Mr. COLE. At the hands of the Federal Power Commission.

Mr. SCHEER. We do not need it at Detroit. We are speaking for the rest of the cities, because we took the leadership.

Mr. COLE. You are satisfied with the rate now charged in Detroit?

Mr. SCHEER. We are getting gas in Detroit for 33½ cents a thousand cubic feet as against 44 at Kansas City; from the same field, or approximately the same field.

Mr. COLE. And you want that situation corrected, the only effective way being by a law of this type.

Mr. SCHEER. Yes; to help the other cities. Let me point this out, gentlemen. In Detroit we have a provision in the contract whereby this pipe-line company coming into Detroit, if in the future it cannot meet the price that can be given by another company, that company can in Detroit be compelled to withdraw from the service, and it accepted those restrictions.

We have also a provision that Michigan gas can come into Detroit. It is not a contract, but it is a statement on record before the corporation counsel of Detroit by the Detroit City Gas Co., and if they accept those restrictions in order to get the market, why we do not need to lean the other way and say, "Why, you have gotten in there once, and you are in there for the next hundred years."

Mr. COLE. Is there anything now which prohibits the city of Detroit, if it wants to, installing a municipal gas plant and using Michigan gas?

Mr. SCHEER. Not at all, except a constitutional limitation which provides that 60 percent of the taxpayers must favor the idea.

Mr. COLE. Would there be any prohibition against that if this bill passes?

Mr. SCHEER. No, sir; but it certainly does interfere with our ability to make our own deals with respect to bringing in gas at lower prices. It is a case of ourselves being close at hand, close to the situation, and knowing what we wanted, and knowing what we wanted and basing our views on our past experience and taking that as against an assumption that something is needed to be done which we do not feel needs to be done.

Mr. MAPES. Mr. Chairman——

The CHAIRMAN. Mr. Mapes.

Mr. MAPES. How many States does your organization represent?

Mr. SCHEER. I would say that at our first meeting the cities that were represented at our first meeting, so-called charter members, if you want it to mean that way, were St. Paul, Minn., which includes Minneapolis, and Wisconsin, Illinois, Missouri, Kentucky, Indiana, West Virginia, Ohio, and Michigan.

Now, then, there were only about 20 cities, but they were the larger cities.

Mr. MAPES. Were they unanimous in their support of the recommendations which you are making?

Mr. SCHEER. Well, I should say, gentlemen, and I can call upon one of the men in this audience to support that, if they were confronted with the necessity of taking this bill with 7 (c), and not taking any bill at all, they would say, "Don't give us the legislation. We will come back at another time."

Mr. MAPES. That was the unanimous opinion?

Mr. SCHEER. That is my belief; and if you want to ask Mr. Dickey, who comes from Portsmouth and is particularly concerned as to 7 (c), who came to us before we had ever seen him and said, "How did that get into the bill?" I would like to have you ask him that question. He is a municipal official. I am not.

Mr. MAPES. For my own information, is Detroit getting any Michigan natural gas?

Mr. SCHEER. No. They made the gas company there agree to take in Michigan gas, if Michigan gas can be brought down on a competitive basis. Again, we are not subsidizing local industry, but we are certainly going to protect it.

Mr. PETTENGILL. Would section 7 (c) interfere with Michigan supplying Detroit, if you wanted to use Michigan gas?

Mr. SCHEER. If it were not for the fact that the Michigan fields are up where they are. If they were down where they straddled the Michigan-Ohio line, it would interfere with such a competition from our own people.

Mr. MARTIN. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Martin.

Mr. MARTIN. You idea of 7 (c) is that it freezes a situation in which an existing facility has a complete monopoly; it freezes that situation?

Mr. SCHEER. Yes. When I say that I say the facility. I mean the pipe line. I do not mean the whole utility.

Mr. MARTIN. Certainly. I am referring to the pipe-line company.

Mr. SCHEER. Yes. I think it takes away the liberty which we have got now and just gives us more than we want. It is like——

Mr. MARTIN. And, if you are dissatisfied with conditions which develop which might be rectified by competition if it was permitted, it would be necessary for you to come to the Commission for relief?

Mr. SCHEER. I did not quite get that point.

Mr. MARTIN. Uuder this section 7 (c), if you were dissatisfied with conditions growing out of this monopoly, although it only affected the local situation you would have to come for relief to the Commission and thresh out the issues and get a settlement here, whereas competition if permitted might settle it.

Mr. SCHEER. That is right. Competition might effectively settle those questions. It has in the past.

Mr. PETTENGILL. There is further regulation by State authority, by regulating the distributing company, which I suppose in most States does have a certificate of some sort. Is that a sufficient control against other companies coming in to take that particular market and starting competition?

Mr. SCHEER. Yes. That is only one of the many checks we have got on a situation of that kind. That is just one of many of them. I did not enumerate them. I did not think it was necessary.

Mr. HALLECK. Mr. Chairman——

The CHAIRMAN. Mr. Halleck.

Mr. HALLECK. Are there now cities in this country which would like the service of natural gas that do not now have it?

Mr. SCHEER. Yes; I would say there are a great number. I am employed by a group of Michigan cities which tax themselves one-half a cent per meter per month for a period of 6 months to pay my expenses. That is what they think of the necessity for natural gas.

Mr. HALLECK. Now, do you not think that capital might be more interested in extending a line, possibly an independent line, to some of those areas to serve some of those cities, if they believed and knew that not only would they get a fair rate, but their entrance into that market would not be usurped or destroyed by some large company coming in and putting them out of business?

Mr. SCHEER. Your question answers itself. The fact that a few companies without that protection, practically monopolize the entire industry, is obvious.

Mr. HALLECK. Of course, the history of the natural-gas industry is that it has been operated as a purely private business insofar as interstate activities are concerned.

Now, we are seeking in this bill to subject them to governmental control and regulation. Of course, I was a little interested in your statement that you would rather not have any bill than to have this one with section 7 (c), because the benefits that are otherwise provided in the bill will accrue and if it should be discovered that section 7 (c) was operating to the detriment of the consumers, or the cities interested, it could easily be taken out of the law.

Mr. SCHEER. Mr. Halleck, you have got that and then you have got this. The Commission has the right to keep them from selling gas too low, at too low a price, too. They have got that check, and we certainly do not need that on these enterprises. You have got that check and regulation over the rates. The people usually do not think that, in contemplating rates, that they might be too low; but you certainly have that power there. It is just and reasonable. You have got the check there and we have such checks locally to take care of that situation, and if experience shows that you need that additional protection for the great monopolies, why, maybe we can come in next year and say, "Let us get in", but please let us keep something that we have gotten during the last 2 years, as a result of a great deal of work.

Mr. COLE. Mr. Chairman——

The CHAIRMAN. Mr. Cole.

Mr. COLE. May I ask another question? As a member of the subcommittee that considered the gas bill during the last session, in recommending the bill, section 7 (c) as found in this bill was not included. I have not heard anyone in the testimony so far state the reason for its being in the bill now.

Mr. PETTENGILL. Who is the "daddy" of section 7 (c)?

Mr. COLE. It was not in the bill that our subcommittee wrote last year.

Mr. SCHEER. As a matter of fact, no reasons have been advanced for it. I tried to make some plausible reasons, and answered them, and maybe you were not here, Mr. Cole, but I did bring that out earlier in the session.

The CHAIRMAN. I will assume responsibility for authorship of section 7 (c).

Mr. SCHEER. We want to say, Mr. Chairman, that we know that you were motivated by the very finest consideration for our needs, because you championed this measure in the past, and we have been content not to come up here before, because we have got other problems; because we felt that your bill would be a help. We introduced H. R. 8711, because it more definitely sets forth our views. We would prefer to have this bill, because you have gone so far into the provisions of section 7 (c). It is not in this bill.

Mr. HALLECK. Mr. Chairman.

The CHAIRMAN. Mr. Halleck.

Mr. HALLECK. There is certainly ample authority in other utility measures to justify the inclusion of this section in this bill, if this is such an industry, or a similar industry.

Mr. SCHEER. Well, the practice has not proven that point, and I do not think you can prove it by application to other industries.

Mr. HALLECK. Practice so far has proven that competition has failed to bring down rates.

Mr. SCHEER. That is not true. Competition has brought down the rates. Until we brought in an independent pipe-line company to Detroit the best price for gas, which the local gas company was trying to make, and the best price that we could get until this pipe line was brought in, as was testified to before the common council of the city of Detroit, the best potential price they could get was 45 cents a thousand cubic feet. We cut that down 33½ percent, by contracting with this company.

Mr. HALLECK. Of course, you are referring to one specific instance, and I am referring generally to the situation as it has prevailed over the country. In other words, if competition in the industry had kept the rates down, or brought them down, to where they should have been, there would not be any use in passing this bill, would there? Competition has not done that.

Mr. SCHEER. Competition has not done that because of the political power of the industry, their control of the industry, and their ability to gradually squeeze out competition and there has not been sufficient protection to give competition a chance to reduce the rates.

Mr. HALLECK. I can well understand how that would be true.

Mr. SCHEER. So that is——

The CHAIRMAN. I think anyone looking over the history of regulation in recent years could not help but reach the conclusion that the decided weight of opinion is, for modern regulation, in favor of a certificate of convenience and necessity. The only justification for regulating these utilities is that they do have what is in effect, a monopoly. In the absence of that monopoly it might be better to have no regulation so we could depend upon competition taking care of the needs of the consumer.

Now, you come here and you say we want regulation. We want a commission to depend upon, to give us reasonable rates, to fix maximum and minimum rates, but we are not satisfied with that. We want to play with loaded dice. We want regulatory control of the utility, but unrestrained competition for the consumers. If we can get an advantage through the lack of regulatory control over new competition coming into the field, we want that advantage.

We must eventually reach a conclusion one way or another, whether we trust the Commission. If we can trust the Commission, with the important duty of fixing our rates, why can we not trust them with the question of two lines or one? Is it necessary to add the power of unrestrained competition in order to give us just rates when that is the object of setting up a commission?

Mr. SCHEER. Mr. Chairman, I would answer this way: Let the Congress, or let the committee, first prove there is unrestrained competition today. It just does not exist. For example, today we have got competition in Detroit. Furthermore, this certainly applies to a company that seeks to compete. It does not place every company under the requirement of getting a certificate.

The CHAIRMAN. How many big cities do you suppose would want to be furnished by two sources of supply?

Mr. SCHEER. How many?

The CHAIRMAN. Yes; how many.

Mr. SCHEER. May I ask Mr. Reed to answer that question? He speaks for Cleveland. He represents 40 Ohio cities, and I would like to have him have a chance to express his views. He has been in this for some years.

The CHAIRMAN. How many local cities would deliberately choose two electric companies or two water companies?

Mr. SCHEER. Well, when the one company is not satisfactory, they choose to build a plant of their own. We cannot build a pipe line of our own, but we can ask for competition there so that we can choose between it.

You cannot look over the industry and say that there has been destructive competitive competition. You cannot show the need for this.

The CHAIRMAN. The question is whether you are going to have one or two. The power is given to the Commission to decide, under the circumstances, whether it will permit another company to go in there and compete or take over a certain territory instead of the old company.

Mr. SCHEER. Yes; and that——

The CHAIRMAN. And the Commission must make that decision from the standpoint of public convenience and necessity.

If such competition is in their judgment justified, there is nothing in this bill which would preclude the communities from having it. If you want to enter into some competition that is unwarranted, then this bill would stand in the way of it, because we assume that the Commission would not give that authority.

If you have legitimate regulation, in the end your community will get better and cheaper rates than it will with too much competition.

The gas industry is in a separate position from other utilities. There is greater reason for this provision in the case of gas than electricity. Electricity is produced by permanently renewable sources of supply. Gas fields are limited, and it is only a matter of years when all are going to be exhausted. Communities are going to build up relying on gas and then have a hard time adjusting themselves to conditions to come. The investment of gas companies is more hazardous than that of other public utilities.

If there is any justification for a certificate of convenience and necessity, in my judgment, it is in the gas field.

Mr. SCHEER. Well, Mr. Chairman, our own answer is to point to the great growth of monopoly in the industry without requiring independent competition, independent action, or requiring them to get a certificate of convenience and necessity.

In our opinion, the only answer is that we have got a situation here in which our experience does not demonstrate that.

The CHAIRMAN. You have regulation established by law. The companies are regulated presumably in the interest of the public. That is what regulation is—monopoly controlled in the public interest.

Mr. SCHEER. Furthermore, regulation is devised to correct abuses, and there have been no abuses to correct in this instance; there have been no abuses.

The CHAIRMAN. Well, as long as the authorship——

Mr. SCHEER. Of the instance I am speaking of.

The CHAIRMAN. As long as the authorship of that section has been brought up, I wanted to express those views.

You may proceed.

Mr. WADSWORTH. May I ask a question?

The CHAIRMAN. Mr. Wadsworth.

Mr. WADSWORTH. Will you revert for a moment to your suggestion relating to gas reserves? As I recollect it, your association has an amendment on that.

Mr. SCHEER. Yes. I will be glad to read it.

Mr. WADSWORTH. Yes.

Mr. SCHEER. I will be glad to read that. I think this is what you mean. It is an amendment to section no. 10, by adding a new subsection, to follow subsection (b) and to read as follows:

That is section 10.

Mr. WADSWORTH. What is the purpose?

Mr. SCHEER. The language is this [reading]:

(c) The Commission may, after hearing, determine the adequacy or inadequacy of the gas reserves held by any natural-gas company, or by anyone for it, including its owned or leased properties or royalty contracts, and the Commission may, after hearing, determine the reasonableness or propriety of the inclusion of all delay rentals or other forms of rental or compensation for unoperated lands and leases, in operating expenses, capital, or surplus.

It is purely to prevent those losses entering into the wholesale price structure, the cost of carrying more acreage than that company will ever need to supply the markets that it has under contract and which contract it has taken under its control for the purpose of keeping independent competition from getting a contract and building a line to cities that want gas.

Mr. WADSWORTH. I can see the objectives, and on its face it seems reasonable. However, it is putting a terrific task on the Commission to decide whether a company is holding too much gas, in view of the fact that it is exhaustible and no one can tell how soon.

Mr. SCHEER. But, there are competent authorities who can draw a line and say they certainly do not need this much in their set-up, there are certain excesses which can be determined without any trouble, and it is the basis of a lot of trouble in Ohio and the Cleveland case, for example. It is a big task, but, believe me, it is a necessary one from our standpoint.

Mr. WADSWORTH. It brings up the matter of the conservation of natural resources; your proposed amendment.

Mr. SCHEER. Yes.

Mr. WADSWORTH. I am not sure that would have a beneficial effect in the long-long run, in the matter of conservation. My mind goes to the Texas field, about which I have heard. I have never seen it, but in previous hearings a year or two ago, the committee was informed very dramatically of the enormous waste of gas going on there. There was no local market for it. And it was escaping into the air at the rate of—I do not know how many million cubic feet per minute, or seconds.

Mr. MAPES. Something over 87 percent of it wasted.

Mr. WADSWORTH. Yes. It is a great pity that it should go to waste. Some companies have come in perhaps since that time and are taking some of that gas and carrying it to market.

It is going to be pretty hard for the Commission to decide under your amendment how much gas should be held in reserve when it is being wasted at the rate of 90 percent.

Mr. SCHEER. I would answer that in this way, Mr. Wadsworth, that whenever there is the threat, this terrible threat, of new pipe lines which comes in from somewhere, that looms on the horizon, all of the big companies immediately send out their agents and make arrangements with the farmers and sign up their gas. Maybe they will pay 50 cents an acre for it; and they get possession of that land, but after the threat of competition fades out of the picture they will not pay those rentals any more, and the farmers get their land back and the pipe lines draw gas from their own wells, or wells that they have under lease, and drain the gas out from under the other lands.

Now, if it is possible for the Commission to know what company is getting gas for such a purpose, it cannot compel them to get rid of the gas, but it can keep them from adding the costs for acquiring that gas land upon the consumer and it will have a tendency to loosen their grip upon the available acreage and make it possible for new pipe lines to get started, and that is conservation, because the landowners say that if they are going to steal their gas, that they had might as well blow it into the air through a stripping plant or a carbon-black plant. We think that is conservation.

Mr. PETTENGILL. This does not require that they divest themselves of the title to the excess acreage.

Mr. SCHEER. No; it does not.

Mr. PETTENGILL. It simply says that they cannot use that in computing their charges upon the consumer. Is that not it?

Mr. SCHEER. That is right.

Mr. WADSWORTH. I can imagine a situation in which in the long run it would be a wise thing for the present generation to carry a part of that charge in order to protect future generations.

Mr. SCHEER. Well, Mr. Wadsworth, there is a certain logic in what you say; but there is another logic in another direction.

No man can say today that there will not be processes invented tomorrow whereby gas may be manufactured from coal and oil or other processes more cheaply than you can bring natural gas to the market over a long distance.

Now, conservation, just because you feel that there is need for it to be saved for tomorrow may be just like putting your money in a bank which closes. You do not get it out. Something comes along and your horse and buggy is not very good, or very valuable, because you can buy an automobile and get there very much quicker.

Mr. WADSWORTH. Of course, you might use that same line of argument with respect to oil and coal. Some substitute might be invented tomorrow or within 10 years from now that would take their place and there would be no further need for conservation of oil and coal, but I doubt if you could get away with that kind of an argument today.

Mr. SCHEER. I do not mean to be an extremist either way, but you can be too much in favor of conservation as well as not enough in favor of it.

Mr. BOREN. After all, is not conservation particularly based on the wise use of our resources? The thing that I am interested in is

to see the gas that is being wasted in the fields such as in my State and in my district, I am interested in any program that will permit the Nation utilizing that gas. We have small municipalities in my section of the country and under the present system they are not able to utilize the gas and it is simply being wasted. It could be used. I am interested in your amendment.

Mr. SCHEER. If further experience in the administration of this act proves that it is needed, we will certainly be one of those to support it, but all of the evidence is to the contrary, from our view.

Mr. BOREN. How much of the gas that you are referring to comes from Oklahoma? You keep referring to the pipe lines from the Panhandle, and I know something about those lines being laid from the northern Panhandle of Texas. How much of the gas for the cities that you represent comes from the State of Oklahoma?

Mr. SCHEER. Well, I would say that none of the gas for the cities that I represent comes from Oklahoma, because most of your gas is sold within the State, and up in Kansas, Arkansas, and maybe some of it goes into Missouri. You are from Oklahoma.

Mr. BOREN. The reason I raised that point is this, is that partly due to the fact that the majority of the independent companies, the smaller companies, that are operating in Oklahoma are unable to deliver the gas in Oklahoma to these distant places under the present situation?

Mr. SCHEER. Well, there again, there is your restraint, the natural restraint, which monopoly operates to keep the independents from coming in and developing. Then, you have got your political condition which keeps them from coming in. You have got their control of finances, and they have got dozens of ways in which they can have a check upon their rivals, and this 7 (c) just gives them another check, in our opinion.

Mr. HALLECK. Let me ask one question further: Have you in mind a specific case of companies holding large gas reserves and having that acreage charged to the sale price of the gas, unloading it on the consumers?

Mr. SCHEER. This corporation that I have particularly in mind—I would say that there are two—but I will speak only for one corporation which I have particularly in mind, which is the Columbia Gas & Electric Corporation, one of the big four, serving practically all of the State of Ohio except eastern Ohio, and they have carried that issue up to the Supreme Court, and I think that they did that, and I think that it is shown in the opinion, it was declared that the purpose of gathering excessive acreage frequently is to shut out competition and that it is added to the cost. I can get that decision. I think it is shown by the records of the company.

We can also show that in around 1930 and 1931 the Columbia Gas & Electric Corporation held about 8 million acres in that general area, and that 4 years later, due to the circumstances of the depression they had released some millions of acres and were still supplying their markets.

That is a concrete instance of that situation.

I would like to have Mr. Reed, of Cleveland, deal specifically on some of those things. He is chairman of the Ohio committee and that State needs this bill more than any other, but it needs the change that I have stated.

Mr. KENNEY. Mr. Chairman——

The CHAIRMAN. Mr. Kenney.

Mr. KENNEY. I understand you claim that the cost of holding reserve acreage enters into the costs of the rates paid to these pipe-line companies?

Mr. SCHEER. Well, it is something that we suspect and we believe most certainly is occurring, but we cannot tell and we do not believe the State commission can tell.

Mr. KENNEY. Well, assuming that to be so. Would that be offset by the depreciation charges that each company is allowed to write off?

Mr. SCHEER. Well, if they divest themselves of a certain amount of acreage they get money for divesting themselves of that, because it has a value, and control over it has a value, and there is a market for that land. I think it is offset by the return they get. They get their money back.

Mr. KENNEY. When they increase their acreage, though, the reserve should offset depreciation so that the depreciation should be so much less, should it not?

Mr. SCHEER. Yes; in point of dollars. You are getting into quite a technical angle of this that I am not competent to go into.

Mr. KENNEY. All right.

Mr. SCHEER. I am expressing the sentiments that I know exist rather than the technical information which an engineer can give you.

If I may, Mr. Chairman, I would like to have Mr. Reed say a few words. He has been at this for a long time and he can answer questions that I cannot answer. Unless there are other questions you desire to ask me, I would like for you to hear him.

The CHAIRMAN. We thank you, Mr. Scheer.

Mr. SCHEER. Thank you.

The CHAIRMAN. We will hear Mr. Reed.

STATEMENT OF WILLIAM C. REED, NATIONAL TREASURER AND CHAIRMAN OF THE OHIO COMMITTEE OF THE CITIES ALLIANCE, CLEVELAND, OHIO

Mr. REED. Mr. Chairman and gentlemen of the committee. First for the purpose of the record——

The CHAIRMAN. Will you tell us your position, Mr. Reed, and whom you represent.

Mr. REED. I am the national treasurer and the chairman of the Ohio Committee of the Cities Alliance, a member of the United States Conference of Mayors' Committees on Natural Gas, and chairman of the public utilities committee, of the city of Cleveland.

I would like to show, if I may, just why there is a lack of interest in some States in the distress of other cities.

I speak from the standpoint, or regarding, rather, the situation in Ohio as it concerns the city of Cleveland, and we buy gas from the Eastern Ohio Gas Co., which in turn buys gas from the Hope Gas Co., of West Virginia, both under control of the Standard Oil of New Jersey. Hope sells over 50 percent of its product to east Ohio.

In 1935, 57.60 percent. Within the last 5 years, each year being considerably over 50 percent of their production, which they buy and which they produce.

Of that other 50 percent, they sell considerable to the city of Pittsburgh and various other cities outside of the State of West Virginia, so you can readily see the lack of interest so far as West Virginia is concerned in the distress of Ohio, because with the remaining amounts of their production which is bought or produced, a great deal of that is sold at reasonable rates in the cities of West Virginia. So there is no complaint in West Virginia.

Cleveland buys about 70 percent of its gas from the Hope Co. of West Virginia, and we buy about 30 percent of our gas, or use about 30 percent of the gas which is produced in Ohio by the East Ohio Gas Co.

Those figures are as follows—but, first, let me say to you that in 1922 the Hope Gas Co. sold 72 percent of its gas used by the East Ohio Co., and the East Ohio Gas Co. either produced or purchased some 27 percent. That figure changes just a little bit in 1935 and we are now buying 60 percent from Hope and we are producing or purchasing 37 percent in Ohio.

I want to speak just a few moments about the average cost of gas purchases—that is, the average cost of the gas purchased by the Hope people in West Virginia—which is approximately 20 cents per thousand cubic feet, and the average cost for gas produced is just a little bit in excess of 20 cents.

That gas is gathered in West Virginia and transported to the Ohio River, a distance much shorter than from the Ohio River to Cleveland, and along the route from where it is gathered or produced, charges are made which bring that gas to the gate, to the river, of 38½ cents per thousand cubic feet. In other words, that price jumps from 20 to 38½ cents from their points of production, a distance of probably 100 miles to the river. From the river to the city of Cleveland—and I think that we are in agreement with these figures—the price of transporting that gas for approximately the same distance is less than 5 cents.

Now, we cannot examine the figures of the Hope people in West Virginia. We have no authority to go down there with our engineers. We think that it is absolutely necessary to have a Federal regulation in this matter because we think you have to be equipped with almost police powers in order to get the information necessary in the setting up of reasonable rates.

Mr. MARTIN. Mr. Chairman——

The CHAIRMAN. Mr. Martin.

Mr. MARTIN. What does that gas sell for at Cleveland?

Mr. REED. The gas comes to Cleveland, and you understand that is about 75 percent of this gas that we purchase from Hope is purchased at the price of 38½ cents. The gas that we produce in Ohio, or purchase, is produced at about 20 cents, and the transportation cost is very little from there to Cleveland.

Mr. CROSSER. I wonder if I had not better correct you. The city of Cleveland buys from the East Ohio Co., does it not?

Mr. REED. That is right. Pardon me.

Mr. CROSSER. East Ohio originally gets it from Hope.

Mr. REED. That is right.

Mr. MARTIN. I thought you said that you got it in Cleveland for about 33. You have stated that it is about 38½ cents to the river and 5 cents more to Cleveland, and that would run it up to over 40 cents at Cleveland.

Mr. REED. That is right; it is over 40 cents. That is gas which is purchased by the East Ohio from the Hope people. But by mixing that 70 percent—that gas with 30 percent of Ohio gas, which is about 20 cents—we have a gate rate, so to speak, at the city of Cleveland now of about 38 cents, because now we do not allow the Hope people 38½ cents at the river, through the decision of the Ohio Utilities Commission in our last rate fight, when the commission said that 37.1 was adequate and would produce a fair and reasonable return to the Hope people.

Mr. MARTIN. Then you do not get your gas for 33 cents, do you?

Mr. REED. No; I am speaking of Cleveland. I think that you have reference to Detroit.

Mr. MARTIN. Pardon me; you are correct.

Mr. REED. But a rather odd situation arises in that connection and is a question which should be answered as to just why gas coming to the city of Cleveland comes there now at a gate price of between 38 and 39 cents and the gas company is now asking over 40 cents for gas coming approximately 250 miles, when gas coming through four States, 1,200 miles from Texas, is delivered at the gate of Detroit for 33 cents.

Mr. MARTIN. I got the two cities mixed up.

The CHAIRMAN. Let me see if I understand your situation. Assuming that the price at the river is just, how much do you pay in excess of what you estimate would be a justifiable cost?

Mr. REED. You mean our gate price?

The CHAIRMAN. Yes; and finally the delivered price. I understand that you start out with the assumption that the river price would be 20 cents.

Mr. REED. No; that is the production price and the purchase price from independent concerns.

The CHAIRMAN. Well, what was the conclusion you reached as to the amount you pay in excess of what you should pay based on the legitimate river price?

Mr. REED. Well, we feel this way—that the United Fuel & Gas Co., which are immediately adjacent to the fields of the Hope people in West Virginia, produce and sell gas at the river—at the Ohio River—that is the line which comes up the western part of the State of Ohio—and that gas is sold at 26 cents at the river. And we feel that that is a proper guide for the price for the gas at the river and which would probably make a total gate price at the city of Cleveland of about 28 cents.

The CHAIRMAN. About how much?

Mr. REED. About 28 cents.

The CHAIRMAN. And you are paying approximately 38 cents?

Mr. REED. Thirty-eight cents now, and the gas company is contending for a higher figure.

The CHAIRMAN. So that it is about 10 cents higher than you estimate it should be. Is that correct?

Mr. REED. That is correct.

The CHAIRMAN. I am simply trying to understand your figures.

Mr. REED. That is right.

Mr. MAPES. Mr. Chairman——

The CHAIRMAN. Mr. Mapes.

Mr. MAPES. What does that excess price of 10 cents at the river over what you think it ought to be mean to the consumer in Cleveland who we will say has a monthly gas bill of $8?

Mr. REED. Well, a 1 cent in the rate means in dollars and cents about $147,000, so that the reduction of 10 cents would mean about $1,500,000.

Mr. MAPES. Will you break that down a little more. How much does that mean that the average householder would have to pay over what you think is reasonable, on the basis of an $8 a month gas bill?

Mr. REED. A reduction of 10 cents?

Mr. MAPES. If you only had to pay the Hope people 27 cents instead of 38 cents.

Mr. REED. It would be about a dollar and a half on an $8 bill, approximately.

The CHAIRMAN. Mr. Reed, what is the general basis for your estimate that there is an excess charge? Is that based on the figures of the State commission? I do not care anything about the details, but just the source of your conclusion as to the excess charge.

Mr. REED. You mean this excess of 10 cents which we contend?

The CHAIRMAN. Yes.

Mr. REED. The Hope people, if we are to accept their statement literally, contend that they are doing business in a very mountainous sort of a region and that their costs are considerably higher. In spite of their contentions, they have in recent years gone farther south in a still farther mountainous country and made extensive investments, which if their statement is to be taken to be the fact has kept the price up in order for them to obtain the proper yield on their investment. Now, they have only produced about an average of 12 percent of their requirements over the period of the last 5 years. In other words, they have held back a terrific reserve of gas in their wells in West Virginia, some 3,000 wells. They claim they are justified in holding back this reserve because of the possibility of some extremely cold weather that may come on us suddenly at some time. In addition however, to holding back this reserve they buy the greater percentage of the gas which they sell from independent concerns at about 20 cents. They are capable of producing about 39,000,000 cubic feet of gas per day and they produce a very small percentage of that—less than half.

It is our contention that if they, even if they continued to buy gas from independents, if they would, in extremely cold weather, utilize the maximum part of their contract—in other words, purchase their maximum part of their contract from independent concerns and turn their own gas jets on with the supply that they have so that they would furnish, say, half their own requirements from their own wells, that their gas instead of being produced from their own wells at a figure beyond 20 cents would be produced probably for 10 or 12 cents.

The CHAIRMAN. That total difference in your estimates, between you and the company is not accounted for by the reserve alone, is it?

Mr. REED. No.

The CHAIRMAN. That is the cost of carrying what you regard as excessive reserves?

Mr. REED. No; we have never been able to determine just where this price jumps from 20 to 38½ cents at the river; just what is involved in that 18½ cents. We have never been able to make the proper investigation in West Virginia and even if we were inclined to do so it would take considerable money for us to do that and then we would not really have any authority.

The CHAIRMAN. So that you feel that if the authority proposed to be given to the Commission here to investigate those costs and charges existed in the Federal Government, that it would aid you in securing a just rate for your gas?

Mr. REED. That is right. Now, there are affiliated companies and with the affiliate companies of the Hope people, which is, as I say, controlled by the Standard Oil, their price is higher to their affiliate companies than it is to their nonaffiliates. Nonaffiliated gas companies in Fayette County in 1935—the average price of the gas sold was 31½ cents.

Now, to affiliate companies such as the East Ohio Gas Co., it was 38½ cents at the river and mind you, we have to transport that gas just as far as they transport it to get it to the East Ohio Co. at the river. The East Ohio Gas has to transport that gas the same distance to get it to Cleveland, but the price that the affiliated company, the East Ohio Co., pays, was 38½ cents in 1935, and in 1931 it was 41.8 cents to the Peoples Natural Gas; also an affiliated company, 38½ cents and the River Gas Co., 38 cents.

Now, then too, mind you, they have their own distribution plants in various cities in West Virginia. For instance in Clarksburg their rate to the burner tip in Clarksburg is 28.36. Now, then, they contend that in the city of Clarksburg that is about the distribution rate. In other words, a large ctiy where they have a tremendous number of users, they claim the distribution rate is around 23 to 26 cents and here they are selling gas in a small community for that price, and the costs involved are higher to distribute it to 10 people than to 100 people in the same area.

The CHAIRMAN. Does that gas which is sold at those various prices come from the same source?

Mr. REED. That came from the same source; yes. And, at Salem it is 33 cents. In one other city in West Virginia, Sistersville, they have the lowest rate, at 27.99 cents.

Now, then, with our rate of 38½ cents that we have, the Hope sells to the East Ohio at the river. They are now asking for a rate somewhere around 41 cents. In other words, the gas that they now purchase under our contract is purchased by virtue of a decision handed down by the utilities commission 5 years ago. I might say to you, however, we are operating without franchises. We have not had a franchise since last July. We are operating under stop-gas legislation of the city council. Various other cities in Ohio have no franchise at the present time, but this gas at 38½ cents at the Ohio River is transported, as I say, to Cleveland and it then becomes about 39-cent at the gate of Cleveland.

It is claimed that this contract is the flat contract at the gate, regardless of the amount of gas consumed at the city of Cleveland, and there are 61 cities along this east Ohio gas line, yet in spite of

that, the east Ohio people have a promotional or have a rate, a low bracket, to industrial consumers who use a large quantity of gas in any individual day, of 38½ cents, gas which they claim they pay their sister company at the Ohio River 38½ cents for and transport it to the city of Cleveland.

We realize, of course, that is an industrial rate. We favor promotional rates. And we realize that industrial rate prices to industries should be lower than the domestic consumers, but that can only be arrived at in a certain technical manner, and we think if this bill passes that the Federal Power Commission is sufficiently familiar with the engineering problem involved so that they will set up just what is a just and reasonable rate below that of the domestic consumer in a franchise. In other words, the price of gas is predicated to some extent upon a load factor. In other words, Detroit has a contract to purchase from the panhandle gas and the price that they pay of 33½ cents is based on a load factor of 70 percent; 70 percent, and they arrive at the load factor, for the benefit of some of you gentlemen that may not follow me, they arrive at the load factor in this sort of a fashion: Take the heaviest day of consumption of the year, and set that figure aside. Then they take the total consumption for the other 364 days and divide it by 365, and the relationship of that figure to the heaviest peak day is the load factor, and 70 percent of the load factor is highly desirable. So that the price Detroit has obligated themselves to pay is based and predicated upon the 70-percent load factor.

Now, that means that gas is fed into that line at the intake and compressed all along the line—you have to compress it, and keep 30 percent of that line flowing and yet there is no revenue from it; but you have to keep it there because they are liable to have a cold day and pull that 100 percent out, and probably 340 days in the year they will not pull much out over the 70 percent, so that the 30 percent of that line is rolling all of the time and has no value on the value of production at the intake and can be sold at a much less figure.

While I am not so familiar with the Detroit contract, I think that after they reach a certain point, beyond their load factor of 70 percent, that that gas drops from 33½ cents to less than 20 cents. And, of course, that gas can be sold to industries and it is off peak gas and has to be sold at the time when you are not really having the cold weather.

Now, there was a question asked yesterday that I would like to answer in my own way. One of you gentlemen asked the question yesterday as to whether we could be assured under the present set-up of a fair and reasonable rate in the city of Cleveland under the present circumstances and the answer to that is emphatically no, because even if we had plenty of money—which we have not got—to make investigations and parleys, and even if the Commission were favorable, still the Hope people could say in the final analysis they would not sell any gas to the East Ohio Gas Co. and the East Ohio Gas Co. would not have any gas to bring into the city of Cleveland.

So we are absolutely helpless in the matter so far as being positively assured of a just and reasonable rate.

We hope that you gentlemen will seriously consider the amendments that were offered here by Mr. Scheer, the secretary of our alliance.

We feel that section 7 (c) is going to work a hardship on a number of cities.

Let me just say to you, to illustrate just how that is going to affect the city of Cleveland, we are involved now in a rate fight. We can buy gas from the Panhandle people in Texas if we want to make a contract and assure them we are going to use so much gas. They would be satisfied to be assured of the same amount of gas that we are now purchasing, but it would take us a year to get that gas, and in order for us to get that gas we would have to have a distributing plant. In order for us to have a distributing plant we would have to have the money, and in order for us to get the money we would have to issue general obligation bonds, which we do not have authority to issue because we have exceeded our limitation. We would have to get enabling legislation from the State of Ohio. That would take a long time for us to do that through the legislature.

But there is one other manner in which it might be accomplished: We can raise that money through mortgage bonds; and some of us in Cleveland have been shopping around to see just how and where we can raise the amount of money necessary to purchase that plant in the event we cannot work out a fair and equitable arrangement with the East Ohio Gas Co.

Now, then, if section 7 (c) were to be in this bill, we would not know whether we could get a contract for gas. I am quite sure we could sign that contract for a new supply of gas from Texas within a week; but if they had to come to Washington and set up and obtain a certificate of necessity and convenience, it is going to take 6 months or a year, because the Power Commission will be in no position to know whether they should issue a certificate of necessity and convenience until they inquire to find out the reasonableness of the rates, and they are going to have to make that examination and make it after this bill passes. Suppose someone comes down here to Washington next week and asks the experts of the Federal Power Commission if they can furnish gas to the city of Cleveland? Why, the Power Commission is going to be 6 months or a year before they will be able to determine it—the reasonableness of the rates that are going to be set in the city of Cleveland; so obviously I think that sort of a request would be denied at the present time.

So we just have to disband any theory of municipal ownership, I would say, for the next year with section 7 (c) in the bill.

Mr. HALLECK. Mr. Chairman——

The CHAIRMAN. Mr. Halleck.

Mr. HALLECK. As I understand you, you say this would not assure you of a lower rate because ultimately the company would refuse to furnish you gas at all. Does this bill provide that they cannot terminate their service without permission from the Commission?

Mr. REED. That is right.

Mr. HALLECK. Well, then, of course, that contingency to which you refer could not happen if this bill were to become law.

Mr. REED. Well, they threatened to tear the lines up on us before, but the Ohio commission has protected us in that respect. The Ohio Supreme Court said that they could not rip the lines up.

Mr. CROSSER. If the people who supply the gas at the Ohio River should discontinue it, you could not do much? You could not do anything on the other side of the river?

Mr. REED. That is right.

Mr. MAPES. Mr. Chairman——

The CHAIRMAN. Mr. Mapes.

Mr. MAPES. You say that 70 percent of the total amount of gas consumed in Cleveland comes from the West Virginia fields, from a Standard Oil controlled company, and 30 percent from the Ohio fields?

Mr. REED. Local fields.

Mr. MAPES. Do you obtain the gas from a separate company in the Ohio fields?

Mr. REED. Yes; from various companies. Some of that gas is purchased from individuals who have individual gas wells and farmers, independent producers, and quite a bit of it, probably 50 percent of that 30 percent, comes from wells owned by the East Ohio Gas Co.

Mr. MAPES. So that you are now furnishing gas to the consumers of the city of Cleveland from more than one company?

Mr. REED. No. We have just the East Ohio Gas Co., but they are furnishing us other companies' gas.

Mr. MAPES. The East Ohio Gas Co. is the Standard Oil Co.?

Mr. REED. That is right.

Mr. MAPES. And it buys gas from the West Virginia field and from the Ohio field both; is that the situation?

Mr. REED. That is right. It buys gas at the river.

Mr. MAPES. And you buy all of your gas from the East Ohio Gas Co.?

Mr. REED. That is right.

I want to thank you gentlemen for having an opportunity to appear here. If there are no other questions, that is all I have.

The CHAIRMAN. We thank you, Mr. Reed.

There was some desire on the part of the members not to have a session tomorrow because the House is not going to be in session and some members are going to be absent. There is an amendment coming up on an appropriation bill that probably a good many members of the committee will desire to vote on and desire to be on the floor when it is considered this afternoon. It is possible, however, that that amendment will be disposed of by 3 o'clock, so if agreeable to the committee, we might meet at 3 o'clock this afternoon instead of tomorrow.

Mr. COLE. Instead of tomorrow?

The CHAIRMAN. With the idea of not meeting tomorrow.

Mr. MAPES. What witnesses will appear before the committee this afternoon?

The CHAIRMAN. Mr. Dickey, city solicitor of Portsmouth, Ohio; Mr. Robert D. Garver, to make a statement in answer to a former witness; Mr. Hunt, of Syracuse, N. Y.; and Mr. Maltbie, chairman of the Public Service Commission of the State of New York.

Then, there is a statement to be filed by Mr. Gandy, representing the National Coal Association.

Mr. HALLECK. Are those proponents or opponents?

The CHAIRMAN. I think that they represent both sides.

Mr. MAPES. I have no objection to meeting this afternoon but I imagine that it will be difficult to get a very large attendance of committee members.

The CHAIRMAN. I doubt whether we will get much of an attendance tomorrow.

Suppose, then, that we meet at 2 o'clock with the understanding that when the amendment comes up on the floor we will recess.

(Thereupon, at 12:05 p. m., the committee took a recess until 2 p. m. of the same day.)

AFTERNOON SESSION

THURSDAY, MARCH 25, 1937.

The committee reconvened, pursuant to the taking of recess, at 2 p. m.

The CHAIRMAN. The committee will come to order, please. I believe the next witness is Mr. Dickey. About how long do you want to take, Mr. Dickey?

STATEMENT OF W. L. DICKEY, CITY ATTORNEY, PORTSMOUTH, OHIO

Mr. DICKEY. Mr. Chairman, I will try to be as brief as I can.

The CHAIRMAN. First, give us your name for the record, and your official designation.

Mr. DICKEY. My name is W. L. Dickey. I am city attorney, Portsmouth, Ohio.

The CHAIRMAN. Thank you.

Mr. DICKEY. I would like to give you a brief history of the Portsmouth situation down there, which I think is a condition or set-up which if this bill passes will be applicable to those conditions as they exist.

I will try to be very brief, Mr. Chairman. I am the director of law of the city of Portsmouth, and stating the case, the United Fuel Gas Co., which is a subsidiary of the Columbia Gas & Electric Co., delivers the gas wholesale to the gate of the city of Portsmouth; the Portsmouth Gas Co. is a subsidiary of one of the other companies, the Associated Gas & Electric Co., and distributes this gas to the burner tips in the city of Portsmouth.

In 1932 we passed a rate ordinance, fixing rates to the consumer, at 40 cents per thousand. That action was appealed by the United Fuel Gas Co. to the Utilities Commission of Ohio. We have been wrestling around with that case before the utilities commission since that time.

We did not have many grievances to find with the Portsmouth Gas Co. other than some attempts that they contained in their cost of production, or delivery, and they were eliminated. The next question, however, arose as to the matter of costs. We at that time did pass some legislation in Ohio putting the United Fuel Gas Co. under the jurisdiction of the Utilities Commission of Ohio. They were ordered to submit their records to show that the gate rate as well as the Ohio River rate was reasonable and just, and that they refused to do, appealing the matter to the United States district court, where we have had 2 years on the matter, and it is still pending in that court.

They were objecting to the jurisdiction of the Utilities Commission of Ohio, given to the commission through the legislation that we had passed.

Now, the United Fuel Gas Co. is charging at the gate, to the distributing company, 37 cents. In the Columbia gas controversy, or rate case was a case in which the Columbia Co. carried its fight to the Supreme Court of Ohio, and will probably end in the United States Supreme Court, where the company was charging all the way from 18 to 24 cents, using the Ohio River rate charge. Now, regardless of whether that is a reasonable charge, they are selling, as I stated before, gas to the Portsmouth Gas Co. at 37 cents. At New Boston, a city of approximately 8,000, lying immediately east of Portsmouth proper, and is surrounded on three sides by the city, and the streets only separate the two cities, and across the street, the United Fuel Gas Co. is distributing at the burner tips gas at 40 cents per thousand. They are further selling to the Ironton Distributing Co., 30 miles east of Portsmouth, and on the Ohio River, gas at 40 cents. And right across the river they are selling gas at about 29 cents. And, a little farther west the rate to the——

Mr. MARTIN (interposing). How do they cross the river?

Mr. DICKEY. They cross the river between Huntington and Ironton at one place and then they cross it again——

Mr. MARTIN. I mean how do they cross it?

Mr. DICKEY. By laying the line on the bottom of the river. Furthermore, the United Gas Fuel Co. is selling gas to the Wheeling Steel Corporation at Portsmouth at a rate less than 25 cents. I have not been able to verify that, but I have been told, informed by different sources that it is as low as 21 cents.

Those are some of the figures that I wished to give you gentlemen because in the passage of this bill, if this bill becomes effective, the application of this bill will apply specifically to our conditions there. This is probably one of the most outstanding cases in the country in which legislation of this kind will apply.

Mr. MARTIN. May I ask you a question?

Mr. DICKEY. Yes.

Mr. MARTIN. Do you claim that these different ranges in rates, from 25 to 40 cents, are under practically the same conditions as to production, transportation, and distribution?

Mr. DICKEY. Yes; they all come from the same line and is gathered from the same territory.

Now, this gas distributed in Portsmouth is gathered in some lines in West Virginia, extending into Kentucky. They have in those localities an abundant supply of natural gas. It comes north into Ohio and some of it goes East. And furthermore, we have considerable distress gas in that territory. Now they talk about consumption; they talk about the production, or the available supply of gas not being sufficient. These pipe lines come over there and gather that gas up and transport it across the river into Ohio and other places and are so arranged that a great many people in West Virginia and Kentucky cannot get their gas into the pipe lines. As an illustration, they make a contract with an individual, or with some small company, to take so much of their gas as the market will require or the industry may demand into the pipe line. The pressure has to be maintained at the higher pressure for them to get in their gas. That is my explanation of distress gas in this locality.

Now, we have tried in every way that we can to reach an agreement with the United Fuel Gas Co. in order to get gas at a reasonable price and at rates this company is distributing it to other cities around Portsmouth. And I might say that the United Fuel Gas Co. distributed gas to Sciotoville, which lately came into the city of Portsmouth, and is only divided now by streets, and since Sciotoville came into the city of Portsmouth the United Fuel Gas Co. has sold its holdings to the Associated Gas & Electric Co., which is the Portsmouth company, in order to evade the jurisdiction of the Utility Commission of Ohio.

Now, sometime ago, a year or so ago, when I was here in your city, I wasc given the opportunity of writing a sentence or a clause into H. R. 12680, which was a bill to place the utilities under the jurisdiction or protection of the Interstate Commerce Commission. And I might say here that the natural-gas companies, as far as I am able to discover, are the only utilities that were not included in national or State legislation for the purpose of regulating interstate commerce.

I do not know how that happened, but, nevertheless, they were not regulated by the Interstate Commerce Commission. And we are attempting to regulate them in Ohio through the utilities commission, and that is why we are in the United States court.

The CHAIRMAN. Before you leave that. Do I understand that the pipe line comes through the city of Portsmouth and goes on up into the State?

Mr. DICKEY. No; they dead-end into Portsmouth, but the line crosses the river east and comes into Ohio.

The CHAIRMAN. What is the length of that dead-end?

Mr. DICKEY. The dead-end from the source of supply or from the Ohio River?

The CHAIRMAN. The main line.

Mr. DICKEY. Well, that is the main line. There are two main lines; one crosses the river about 15 miles east of Portsmouth.

The CHAIRMAN. The point I had in mind was how far the gas was transported from the point of production to your city. That was what I was really trying to find out.

Mr. DICKEY. That would be 55 or 60 miles. Both lines; the one comes on the south side of the river and the other comes on the north side of the river.

The CHAIRMAN. Do they contend there is any distinction which justifies these different rates for different communitites?

Mr. DICKEY. I do not think so, Mr. Chairman. They have a very large consumer of gas with the Wheeling Steel Corporation; they have New Boston; they have Portsmouth and other consumers of gas in the immediate vicinity of Portsmouth and New Boston which runs very high.

Now, we have endeavored through the negotiations with different finance companies and different people that had distress gas to obtain and get additional gas into the city of Portsmouth. We have failed on numerous occasions through the fact that when these people look into it, as to whether they are going to be able to finance it or not, in some way, they are unable to do so; there is plenty of gas to supply us, but through lack of finance, or through interference, or for some other reason, it is not transported into that field.

Now, there have been some questions raised here as to section 7 (c) which was discussed rather extensively this morning. But, if any

company coming to the city of Portsmouth attempted to deliver us gas they would be forced to come before your committee, or come here to obtain the permission to bring that gas line into the city. My contention in this matter is that if they were forced today before they could get that done, they would be financially embarrassed from sources that work from the bottom, or in some way or place and is able to know about those things.

That is the one objection that I do have to section 7 (c). It would, in my opinion, place that company in a position where it would be practically forced into a rate case before they could even get in. Now, as an illustration, suppose a company makes an application to get a permit or certificate of convenience, the commission or the committee would be forced to go into the question of finances to see whether they would be capable, which would probably be a good thing. But then they would also be forced to go into the source of supply of the company and also go into the question of the cost of transportation because all of those things together make up the rate case. I am afraid we would have the trouble of a rate case before they could get a certificate of convenience and necessity. And, Mr. Chairman that is one of the reasons why we object to section 7 (c).

Now, under the conditions there, people across the street——

Mr. MARTIN (interposing). Before you go on from there I want to ask you a question.

Mr. DICKEY. Yes.

Mr. MARTIN. May I ask you where the ownership of this United Co. that supplies Portsmouth is? Where is the ownership and control? Is that an independent company?

Mr. DICKEY. No; that is a subsidiary of the Columbia Gas & Electric Co.

Mr. MARTIN. And is that an independent company, or is that a subsidiary?

Mr. DICKEY. Well, the Columbia Gas & Electric Co. is the parent company of the United and several other companies; they supply them gas which comes into Ohio and goes north, and also goes east from there. That is a very large company with headquarters, I believe, in New York.

Mr. MARTIN. Thank you.

Mr. PETTENGILL. Going back to section 7 (c): Among other things, do you not think that is with the idea of controlling the situation where others might want to go into a field that is already occupied?

Mr. DICKEY. Yes.

Mr. PETTENGILL. So they certainly could not finance themselves until they got a certificate of convenience, showing public necessity.

Mr. DICKEY. That is right.

Mr. PETTENGILL. And when they come down here asking for permission to do that they will be required to show where the money comes from?

Mr. DICKEY. Yes.

Mr. PETTENGILL. And will have to make a showing one way or another of their financial ability and the need for the service.

Mr. DICKEY. They probably would, due to the fact that if the finances were available at that time they could come down here and attempt to show the necessity of putting in additional lines, but they would be in the position of being forced to obtain the finances and put the money on the table before they came here to obtain the permit.

Mr. PETTENGILL. Thank you.

Mr. DICKEY. That would make it difficult, I think, for them to do.

Mr. PETTENGILL. Of course, if it were an old-established company going into the field, it would be different.

Mr. DICKEY. Yes.

Mr. PETTENGILL. You are dealing now with new ones; but if you are dealing with old companies, already occupying the field, the financial problem might not be of great significance. But a new company, organized for the purpose of developing a new field and building new transmission pipe lines into the territory, it seems to me, would find itself under very great difficulty from the practical standpoint.

Mr. DICKEY. Yes; it would.

There is one phase of that matter that you called my attention to, and I am very glad that you raised the question. It seems as though the well-established companies would not come in due to the fact that they must have some sort of a working arrangement with this established company that is there, so we are unable to obtain any competition from them.

Mr. PETTENGILL. It seems to me that the established company gets sufficient protection because of the close contact in the money market; it is fully protected, it seems to me.

Mr. DICKEY. Well, I think so. Now, the situation in our State, as well as other places I am familiar with, is somewhat the same, and that is as long as the established company does not have any competition they are pretty hard to deal with. They just say—they have the usual phrase—that gas usually flows in lines where the higher market is offered. Of course, in the East here, where in a good many cases they have had artificial gas, the outlet here is more inducive than it would be locally. But here we are, gentlemen, within a half hour to 2 hours' ride to the gas field, and even from the southeastern section of Ohio some gas is produced, and yet we are forced to pay 37 cents a thousand at the gate when right across the street they are charging 40 cents at the burner tips. We are operating there without even a contract; we are operating there under this plan without a contract.

Now, those are some of the conditions that exist, and I wanted particularly to call the attention of the members of this committee to them, because I know when people draft laws and when they recommend laws they are interested in the application of those laws and interested, of course, in the results of the application. As I said, I simply wanted to point out to you gentlemen the situation there and the interest we have in the proposition now pending in the United States district court, where we have a gas line coming across the river and tying into the distributing company, where they charge that distributing company only 3 cents less than they retail it just across the street. That makes it embarrassing for the people of the city of Portsmouth down there, and then we do not think it is right. We have no regulation, so far as it stands at present, unless the United States district court holds that the Utilities Commission of Ohio can take jurisdiction over them. If it does not, then we can only rely upon the Federal laws and control of them through Federal legislation.

Mr. MARTIN. When you pay 37 cents for gas at the gate, what does the consumer pay in Portsmouth, Ohio?

Mr. DICKEY. We are paying 85 cents for the first thousand and 68 cents for the remainder, less 5-percent discount if paid within 15 days.

Mr. PETTENGILL. What do you think of the question which I asked before with reference to section 7 (c) of an established company that is already in the field, and the investments in the business were made long before this bill became a law or was thought of, as to any moral obligation that we might owe to the established company, if we attempted to impose by law control on the source of supply; that is, if we put that new hazard on the business, we are under some obligation to protect them from unnecessary and ruinous competition.

Mr. DICKEY. In answering that I would say this: That I do not believe we have much moral obligation toward these people that could have helped themselves a long while before they ever did anything, since they have been charging 37 cents to us, and at the same time they have been charging the Wheeling Steel Corporation 25 cents, and distributing gas some 40 or 50 miles away at Ironton and other places where the charge is lower and they have been getting by with it simply because there was no jurisdiction in the State, and no Federal jurisdiction, so I do not believe we owe them much moral obligation. I believe they could have helped themselves a long while ago and could have helped us if they would.

Mr. PETTENGILL. Well, the property investment of these companies is pretty heavy, if you look at the income on the invested capital, and so forth. But, the point I am trying to make is the ordinary operating expenses, depletion, and things of that kind; that is what I would like to think of in passing upon the investment and the hazards in the business, depreciation, depletion, which falls upon the operation of the business.

Mr. DICKEY. Well, I do think they are making more than a fair return on the amount invested.

Mr. PETTENGILL. What do your engineers set up as reserve against depletion in a natural-gas field? That would depend entirely upon the facts, I assume?

Mr. DICKEY. Upon the local facts and other things that are taken into account.

Now, these reports, I will say, come from their own auditors and it is pretty hard for us to answer that question definitely. We have not yet had the opportunity of going into their books and auditing them. But I will say this, that they buy gas from the individual producers over there as low, I am told, as 7 cents; and I have some rather authentic reports in my investigation, that it runs up to 9, 11, and 12, wherever they can get it, and they sell it for 37 cents with only 60 miles transportation expense. That is undoubtedly a nice sum of money for that charge, and it looks to us like it would be a pretty good investment. Now I do not know whether I have answered your question but it is pretty hard for me to give you anything definite due to the fact that we have not been able to go into the records of the United Fuel Gas Co., and therefore we cannot say.

Mr. PETTENGILL. It is a big problem; the fundamental problem is free competition rather than trying to regulate monopoly.

Mr. DICKEY. Yes; now, I do not want to be misunderstood on this matter. Corporations are essential and have their rights; they are usually financed by the individual's money and they should not be trampled and hampered. We must deal fairly with them. But I do think that if they want to be fair with the individual, with the stockholders, and with the public as well they ought to be willing and should be willing to place their cards upon the table and go along with us, which they have absolutely refused to do.

Now, Mr. Chairman, there is one thing further, if you will give me permission, I would like to give you a brief résumé in writing of the situation in Portsmouth in order that you may have it for your records. With your permission, I will submit that.

The CHAIRMAN. You will be permitted to place that in the record.

Mr. DICKEY. All right. That will be very fine. Are there any further questions you gentlemen want to ask? If not, I thank you for this opportunity.

The CHAIRMAN. Thank you, Mr. Dickey.

Our next witness will be Mr. Robert D. Garver.

STATEMENT OF ROBERT D. GARVER, DIRECTOR, KANSAS CITY GAS CO., KANSAS CITY, MO.

Mr. GARVER. Mr. Chairman and gentlemen of the committee, my name is Robert D. Garver. I am a director in the Kansas City Gas Co., and for the past 12 years I have been vice president and general counsel for the Gas Service Co., of Kansas City, Mo., and operating natural-gas distributing systems in some 200 towns and communities in Kansas, Missouri, Oklahoma, and Nebraska.

During that period of time I have handled all of the rate hearings for the distributing companies as well as the pipe-line companies serving all of them.

I am not appearing here as a proponent or as an opponent of this bill. I am appearing here merely to correct the record which we believe would be an injustice to us if it goes unchallenged, and it possibly might happen that our silence might be construed as a consent to the statements made.

The statements I refer to are those made by Mr. Smith yesterday and by Mr. Scheer this morning. They stated that the gate rate at Detroit, Mich., is 33 cents, whereas at Kansas City it is 43 cents, notwithstanding the fact that Detroit is three times as far away from the gas supply.

That statement is not correct and is misleading. In the first place, I think it is necessary to understand the situation. Detroit is perhaps three times further away from the gas supply than Kansas City, but it has one pipe line and extends from the Texas and Hugoton field to Detroit.

Kansas City gets its gas from practically the same location in the Texas Panhandle but it has three pipe lines connecting it with that field as well as some 30 other fields, so that the investment in serving Kansas City and guaranteeing service to it is, I should say, three times as great as at Detroit.

Detroit has had interruption in service since the pipe line was built, as they will. Kansas City, on the other hand, has had some 15 years of uninterrupted service, although the pipes have repeatedly burst. But there are other differences between the two. Kansas City has had natural gas for quite a number of years and it is extensively used in the houses, and the winter peak in Kansas City is 70,000,000 cubic feet per day. In the summertime it drops down to 10,000,000. I am using approximate figures. So that if that distributing company was distributing entirely domestic gas the great part of its facilities and the greater part of its investment would be idle for a great part of the time.

In Detroit, which has had artificial gas, the use is practically limited to cooking and water heating which make a steady load on the company's investment which is employed practically all of the time.

The result is that in Kansas City the load factor, which was explained to you by one of the witnesses this morning, is 30, whereas in Detroit it is 70.

Now all of those things would in themselves make for a higher rate in Kansas City than in Detroit, but that still is not the fact. The statement was made that the city gate rate at Kansas City was 40 cents, the inference being that the pipe-line company gets 40 cents for delivering gas to the Kansas City company for all purposes. The pipe line gets for the gas it delivers, for all purposes, on an average of 25.9 cents as against 33 cents in Detroit.

Now if the city gate rate in Detroit is 33 cents, and if it is 40 cents in Kansas City, it would seem that the customers there would get the benefit of it. As I understand this bill the purpose is not to see that the pipe line makes more money, or the distributor makes more money, but that the consumer is fairly treated and gets a reasonably low rate. As I say, if this statement is true, and the rate to the city gate at Detroit is 33 cents, and the rate to Kansas City is 40 cents, then let us see what the consumer pays.

Now here are the comparative rates in Kansas City and Detroit. For the first thousand cubic feet Kansas City consumer pays $1.29; in Detroit, $1.54; Detroit being 13 percent higher in price.

For 2,000 feet, the Kansas City consumer pays $2.19, and the Detroit consumer $2.55; the Detroit rate being 16.9 percent higher.

On 3,000 cubic feet the Kansas City consumer pays $3.04; the Detroit consumer $3.63; the percentage of increase at Detroit being 19.7 percent.

Three thousand cubic feet is the average consumption of the small consumer. The consumer, I suppose, is the one you are interested in protecting, and so I say that the statements that have been made in this respect regarding the rates at Detroit and Kansas City are misleading and do not reflect what the consumer pays. I have the figures that will give the comparative rates from 1,000 cubic feet up to 10,000 cubic feet. For 10,000 cubic feet in Kansas City, for cooking, water heating, the charge is $7.50.

In Detroit the charge for the same amount is $11.18, or 49.06 percent increase.

Mr. Chairman, that is the situation existing between the two towns. In the first place, the pipe line company of Kansas City does not get 40 cents; it gets less than 30 cents, and the consumers in Kansas City have a much better rate varying from 14 to almost 50 percent better than the Detroit consumer.

I simply wanted to show the facts for the record. I thank you.

The CHAIRMAN. Thank you, Mr. Garner.

Our next witness is Mr. Russell G. Hunt.

STATEMENT OF RUSSELL G. HUNT, ON BEHALF OF THE SYRACUSE LIGHT CO., SYRACUSE, N. Y.

Mr. HUNT. Mr. Chairman and gentlemen of the committee, my name is Russell G. Hunt. I am appearing here for the Syracuse Light Co., which is a local operating company in the city of Syracuse.

Mr. WADSWORTH. Of New York.

Mr. HUNT. Yes. This company buys, at a point near Syracuse, natural gas from the New York State Natural Gas Corporation, which owns a pipe line running from Pennsylvania. The natural gas bought by the Syracuse company is mixed by it with artificial gas and the mixed gas is distributed locally, and wholesale sales are made to three affiliated companies and one nonaffiliated company for resale directly to consumers in localities outside of Syracuse, and where the Syracuse Lighting Co. does not operate. All of these companies are completely regulated by the Public Service Commission of New York and all of their operations are local and within the State of New York.

Because of these wholesale sales of the mixture of natural and artificial gas, it is possible that some question would be raised of Federal jurisdiction over the Syracuse Lighting Co. This arises because of the wording of the definition of "natural gas company" on page 3 of the bill. It might be claimed that the definition of "natural gas company" embraces two things—one, the transportation in interstate commerce of natural gas, and, two, the sale of natural gas or of mixed gas for resale to the public. My objection to the definition is to the second part, because it does not confine jurisdiction to gas sold in interstate commerce, but seems to leave open the claim at some future time that wholesale transactions of the type carried on by the Syracuse Lighting Co. could be subjected to Federal jurisdiction.

To avoid confusion and possible misunderstanding, I would like to submit for your consideration a very brief amendment in the nature of an insertion in line 3, page 3, after the word "sale"——

Mr. HALLECK. What page is that?

Mr. HUNT. Page 3, third line from the top, insert, after the word "sale", the words "in interstate commerce", so that, as amended, the paragraph would read:

> (b) "Natural gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale to the public, whether or not such gas is mixed with artificial gas.

Mr. PETTENGILL. Do you not think that amendment is a little bit vague, "sale in interstate commerce"? What you mean is the sale of gas which has moved in interstate commerce previous to the sale.

Mr. HUNT. Not exactly that, Mr. Pettengill.

Mr. PETTENGILL. Here is your pipe-line company which comes in from outside the State of New York.

Mr. HUNT. Yes.

Mr. PETTENGILL. That is interstate commerce.

Mr. HUNT. Yes.

Mr. PETTENGILL. That comes into the distributing company. You mix the gas with artificial gas.

Mr. HUNT. Yes.

Mr. PETTENGILL. And at that time there is not a sale in interstate commerce; that is a local transaction.

Mr. HUNT. The sale by the pipe line, interstate pipe-line company is to the Syracuse Light Co.

Mr. PETTENGILL. But you are not selling in interstate commerce; you are selling locally. You are selling at the point where interstate commerce leaves off.

Mr. HUNT. I was under the impression the situation is this, the sale by the interstate pipe-line company might be said to be in interstate commerce—the sales by the Syracuse Lighting Co. are, I believe, wholly intrastate. My point is that the wording of the definition is not entirely clear that such sales by the Syracuse Co. are exempted from the bill. The sales of natural gas to the Syracuse Co. might be said to be in interstate commerce.

Mr. WADSWORTH. The sale at the gate?

Mr. HUNT. The sale at the city gate.

Mr. WADSWORTH. Yes.

Mr. HUNT. Is regulated?

Mr. WADSWORTH. Yes; my impression was the regulation of the gate rate was to be accomplished under the interstate-commerce clause.

Mr. HUNT. My point, Mr. Wadsworth, is not whether the sale at the city gate is involved but the subsequent sales by the purchasing utility company. To four local companies which distribute the mixed gas. Because of these sales it is possible that the definition as it now stands could be said to include those sales.

Mr. WADSWORTH. Those sales are now subject to the jurisdiction of the Public Service Commission of New York?

Mr. HUNT. They are subject to regulation by the Public Service Commission of New York. By inserting the words "in interstate commerce" after the word "sale" in line 3, on page 3, it would be perfectly clear just what the intent of that section is. I believe it is the intention of the committee not to include such sales as are made by the Syracuse Co.

Mr. MARTIN. May I ask a question?

The CHAIRMAN. Mr. Martin.

Mr. MARTIN. A somewhat analogous amendment was offered here yesterday to be inserted in line 9 on page 2, where the witness representing the company said they acquired gas in Illinois from the interstate line and then sold it to other local companies.

Mr. HUNT. I think so.

Mr. MARTIN. You think that is the same situation?

Mr. HUNT. I believe not.

The CHAIRMAN. In that connection, I take it the particular object of the clause you refer to there is not to exempt natural gas simply because it was mixed with artificial gas, and your real object in offering that language is that as it now stands you are apprehensive that it would bring in some intrastate transactions within the jurisdiction of the bill.

Mr. HUNT. Yes, Mr. Chairman; because the Syracuse Co. are selling at wholesale for resale the kind of gas which is referred to in this definition.

The CHAIRMAN. Of course, the purpose of this bill is to reach those sales where gas is transported across State lines for the purpose of resale. You might have an intervening company that is entirely a State company.

Mr. WADSWORTH. I do not think the proposed amendment would lift the Syracuse Gas Co. out from under Federal jurisdiction in the purchase of the gas from the interstate company.

Mr. HUNT. We are apprehensive about the sales of mixed gas by the Syracuse Light Co. to four companies wholly within the State.

The CHAIRMAN. You do not want the local distributing company to fall under the jurisdiction of the Federal Government.

Mr. HUNT. That is right.

The CHAIRMAN. Very well.

Mr. HUNT. That is, the Federal jurisdiction does not extend to the Syracuse Light Co. and the companies to which it sells, none of whom are engaged in business across State lines.

The CHAIRMAN. Yes.

Mr. HUNT. We are confining it to the Syracuse Light Co.; it buys from the pipe line and mixes the gas and then sells it to other local operating companies for distribution locally.

Mr. WADSWORTH. I would like to ask one question, Mr. Chairman.

The CHAIRMAN. Mr. Wadsworth.

Mr. WADSWORTH. In order to distribute gas in the State of New York you must obtain something in the nature of a certificate of convenience and necessity?

Mr. HUNT. Oh, yes; that is obtained through the public service commission before they can operate.

Mr. WADSWORTH. And is it possible for a competing company to enter into the same market area without obtaining some such permission?

Mr. HUNT. I should say not.

Mr. WADSWORTH. That is from the Public Service Commission of New York?

Mr. HUNT. I should say not.

Mr. WADSWORTH. That is all.

The CHAIRMAN. We thank you, Mr. Hunt.

Mr. HUNT. Thank you.

The CHAIRMAN. Our next witness is Mr. Bigelow, a Member of Congress from Ohio.

STATEMENT OF HON. HERBERT S. BIGELOW, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. BIGELOW. Mr. Chairman and gentlemen of the committee, for the record my name is Herbert Bigelow. I am representing the second Ohio district. We do not know in Cincinnati whether we are paying too much or too little for gas, but we have no way of finding out. We are operating there under a short-time contract which expires in August of next year, a 3-year contract.

In 1931 we passed an ordinance fixing rates, and we were in the public-utility commission with that rate for 4 years and then we gave up in dispair of coming to any decision there. And the compromise was effected between the city and the company on a rate that has been in force, I say, for 2 years, and will expire next year. The city spent $200,000 of its money in the law suit and investigations required and in this litigation before the public-utilities commission, and our city attorney tells me that there seems to be no way of coming to any definite conclusion as to what the rate should be without putting the city to the expense of making a complete invoice of the company's property which would then take us clear into the State of West Virginia and other States to determine what their investments were, and we were, as one city, hardly in position to do that. And, I just wanted to put before your committee this statement, that Cincinnati is very much concerned with this legislation and we are delighted that it is in prospect and we are hoping that the law will go into effect, that it will be passed and go into effect and give us some remedy, which we do not now have, to ascertain what we should pay.

We are buying gas. We are buying gas through some company in Portsmouth, which is buying it from the Columbia Gas Co., through a subsidiary, the Cincinnati Gas & Electric Co.

The CHAIRMAN. I think you would agree, Mr. Bigelow, also, that the city attorney could not advise you that if you had sufficient money you would have no legal basis for going outside of your State to ascertain the value of property in another State.

Mr. BIGELOW. Yes. It is a perfectly unhappy situation we are in, if we have got to go into another rate case with these people. The present rate expires, as I say, next year, and we are hoping to get relief from such legislation as this.

The CHAIRMAN. Thank you, Mr. Bigelow.

Mr. BIGELOW. Thank you.

The CHAIRMAN. We will now hear hear Mr. Maltbie, chairman of the New York Public Service Commission.

STATEMENT OF MILO R. MALTBIE, CHAIRMAN, PUBLIC SERVICE COMMISSION, NEW YORK

Mr. MALTBIE. Mr. Chairman and gentlemen of the committee, the position of the New York commission is to favor Federal regulation of interstate commerce.

Mr. COLE. As I understand, you are a member of the New York commission?

Mr. MALTBIE. I am chairman of the commission. And, as to the extent of that power, it should be adequate to deal with the subject; but it is also our position that the conference upon a Federal department, the authority to regulate interstate commerce, should not be made the excuse of using it as an agency for transferring the regulations to it of intrastate commerce in the same commodity.

Now, as to certain provisions in this bill, H. R. 4008: It seems to us that section 5 (b) violates the statement just made, for section 5 (b), on page 8, attempts to confer upon the Commission, acting under the law, at the request of the State commission, power to investigate and determine the cost of things which according to the very paragraph are not under the jurisdiction of the Federal department.

It is a question, of course, whether the Congress can confer upon a Federal administrative department any powers which the Federal Constitution has not reserved to the Federal Government, and certainly traffic in natural gas or artificial gas, when that is made wholly intrastate, cannot be regulated by the Federal Government. Now, it might be said that if you grant authority to a Federal department which cannot be exercised by that department, it would be invalid, but our experience is that, when there is apparent conference of a power on a Federal department, that department is prone to exercise it and let the matter go to the courts and be decided or litigated, and, of course, such a thing ought not to be left to litigation, if possible, and if that plan is not to be followed, section 5 (b) would either have to come out or be seriously modified.

Mr. WADSWORTH. Mr. Maltbie, would it correct the situation in whole or in part if the words in line 8, "upon its own motion, or", were eliminated?

Mr. MALTBIE. I do not think so, because that would leave it to the Commission, upon the request of any State commission. Now, a State commission cannot confer power on a Federal department, and it cannot, by requesting the Federal department to make an investigation, authorize it to do so. The only source of authority that the Federal department can get is from the Congress, and the Congress can only confer authority reserved under the Constitution or given to the Federal Government under the Federal Constitution.

Mr. MARTIN. I do not know whether I quite understood you or not. Your position is that where the Commission would have no authority to establish a rate, then it would have no authority to investigate and determine the cost factors; is that correct?

Mr. MALTBIE. That is the point. But this attempt to confer some power to investigate and determine certain things upon the Federal Government regarding matters that are not under the jurisdiction of the Federal Government.

Mr. BOREN. May I ask you a question?

Mr. MALTBIE. May I just finish this sentence?

Mr. BOREN. Certainly.

Mr. MALTBIE. And the power in the other provisions in the act confer power upon the Federal Government regarding interstate commerce I think quite fully.

Mr. BOREN. May I ask a question?

The CHAIRMAN. Mr. Boren.

Mr. BOREN. You are referring to subsection (b) of section 5 that authorizes the Federal Government to make certain investigations where they have no authority for action?

Mr. MALTBIE. It seems to authorize the Federal Government to make investigations.

Mr. BOREN. Yes.

Mr. MALTBIE. And I do not think you have the authority to confer upon the Federal Government——

Mr. BOREN (interposing). You are specifically referring to section 5, subsection (b).

Mr. MALTBIE. Yes; that is the subsection that I am talking about. I am coming to section 6 in a moment but I am speaking now about subsection (b) in section 5.

Mr. BOREN. I am particularly interested in that subsection and I want to get your point. Your contention is simply that it is attempting to give an authorization to the Federal Government that does not rightfully belong to it?

Mr. MALTBIE. To the Federal department.

Mr. BOREN. Yes.

Mr. MALTBIE. That Congress hasn't the power to confer.

Mr. BOREN. All right.

Mr. MALTBIE. There are two things, so far as interstate commerce is concerned, the facts regarding the mention in subsection (b) are covered elsewhere in the act, and so far as intrastate commerce is concerned the Congress has no authority, no power to confer that upon the Federal Government.

Mr. COLE. I would like to make this statement at this time, Mr. Maltbie, concerning that particular section. In the hearings last year, before a subcommittee of the committee on H. R. 11662, page 30, the reasons for it were given by Mr. DeVane of the Federal Power Commission in this statement:

> Section 5 (b) of this bill authorizes the Commission to determine the cost of production or transmission in cases where the Commission has no authority to establish the rates. That section is simply in aid of State regulation. There are some of these companies that supply the gas locally and do not sell it at the city gates. The gas that is furnished by them to the local communities is taken from interstate pipe-lines, and the purpose of this subsection is to enable the Commission to determine for the State commission what would be a reasonable gate rate for that gas so that the local commission may be in a position to fix a reasonable consumer's rate in the locality. That is the only purpose of section 5 (b).

If this language is clarified so as to accomplish only that purpose, you would have no objection, I assume?

Mr. MALTBIE. Let me see. So far as interstate commerce is concerned, assuming this gas crosses State lines somewhere, the Congress has authority to confer upon the Federal Government the full power to regulate it. There is no question about that. And if that gas is taken off of the interstate line, let us assume for the moment that that gas flows from another State so there is no question of it originating in the State itself, but if that gas flows off an interstate line, Congress has the power to confer upon a Federal department the regulation of that business to the end of the interstate commerce, which we may say is the sale of it in the first instance without attempting to go into the minutiate, or defining just where that ends, so that if I understand your statement the Congress has the power to confer and has conferred that power in other sections. Now, if the act is an attempt, as I have stated, to help the States, if it is only a function of the State, to regulate intrastate commerce. I do not think there is any authority in the Congress to confer upon a Federal department the power to spend money to assist a State in the performance of its own functions, that is, the regulation of intrastate commerce.

Mr. COLE. As I remember it, Mr. Chairman, in the report last year on the bill, which bill contained language substantially the same as in this bill, the clear intention was stated just as Mr. DeVane expressed it. But I agree with you that the language should be perfectly clear so there would be no conflict with the State commissions.

Mr. EICHER. May I ask a question?

The CHAIRMAN. Mr. Eicher.

Mr. EICHER. How could that paragraph be so construed, when it contains the words "whenever it can do so without prejudice to the efficient and proper conduct of its affairs." Those seem to be adequate limiting words, I should say.

Mr. MALTBIE. I did not construe those words that way. I understood those words to mean that if the Commission had a staff, had funds to do the work, and could do it without interfering with the regulations of interstate commerce, then it could go on to something else. Now, if those words write into this section an absolute limitation upon the Commission that it cannot go beyond the interstate commerce in the section, it is not necessary, because all of those powers are conferred, or are attempted to be conferred, over interstate commerce in other sections of the bill.

Mr. MARTIN. May I ask a question?

The CHAIRMAN. Mr. Martin.

Mr. MARTIN. I would like to ask a question. Assuming that the language goes beyond the powers of the Commission, but that the Commission exercised the power, made an investigation, determined the cost, and acquired this information, and its action in so doing was not questioned. What difficulties would you encounter in a rate case under the State law in endeavoring to get that information into the record? Could you get that information into the record and have it used as a part of the legal evidence in the case, over objection, over legal objection?

Mr. MALTBIE. If I understand your question, yes; because the way you would do it would be this: Assume the Federal Power Commission has made an investigation, presumably it has made it through men who have qualified to testify as experts and if called to the witness stand could qualify. They would be called to the stand. Now, if there were objections made that these men could not testify because as agents of the Federal Government they have gone beyond the jurisdiction which can be conferred upon the Federal Government——

Mr. MARTIN. That is what I had in mind.

Mr. MALTBIE. That is what I thought. It seems to me—I skirted the legal profession. I am not part of it.

Mr. MARTIN. A lot of us lawyers are in the same boat.

Mr. MALTBIE. Sometimes it is an advantage not to be a lawyer; sometimes it is a disadvantage.

But, I would say that the witness would be allowed to testify. We are not limited to the strict rules of evidence. He would be allowed to testify as to facts and as to opinions, if he could qualify. It could not be introduced as the opinion of the Federal Power Commission, as a commission, because there is no witness to be called. The opponents have not had their day in court. You have to have a man there who would testify as to the facts and be prepared to stand cross-examination on the facts; but it could be gotten in that way.

I do not think that the objection that it had been done beyond the powers which the Congress can confer would prevent that man from testifying.

Mr. MARTIN. That is, testifying before your State commission?

Mr. MALTBIE. That is right.

Mr. MARTIN. But if exceptions were taken there and the action of your commission got into court, you are not certain what the result would be there, are you?

Mr. MALTBIE. Well, I am pretty certain. We are not bound by the technical rules of evidence. Of course, we always give exceptions. That is just a way of saying that they disagree with the Commission; but they do not amount to anything, because they do not have to take exceptions. They can object to anything later whether they take exceptions or not.

Mr. MARTIN. All right.

Mr. EICHER. Mr. Chairman——

The CHAIRMAN. Mr. Eicher.

Mr. EICHER. I construe that paragraph merely as giving the Commission power to spend some money to get intrastate information if in their judgment that information might be of help to them in determining interstate questions before them for decision.

Mr. MALTBIE. Well, we are skirting a bigger question just now, too, but it does not seem to me that the Congress can confer power upon a Federal Government to do something the Federal department has no jurisdiction over and which the Federal Government has no jurisdiction over.

Mr. EICHER. Of course, that would involve the question of whether there was a sufficiently direct relationship between the two so as to enable the Federal Power Commission to go into the intrastate field.

Mr. MALTBIE. Then, you come to the question of implied powers. And, of course, I am not attempting to dispose of the question raised in the Shreveport case, either, as to whether the regulation of the rates of interstate commerce in natural gas might not carry with it the regulation of intrastate rates under the conditions described in the Shreveport and Wisconsin cases. There is nothing of that in the bill as yet.

Mr. EICHER. It is not in the bill?

Mr. MALTBIE. Not at all in the bill as yet; nothing about that which those cases imply.

Now, passing on to sections 6 (a), 6 (b), 7 (a), and 7 (b), and 7 (c), I have in my mind a somewhat similar objection. You will notice that in section 7 (b), there is a limitation in the second line of the paragraph:

> No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission.

Now, that limits that paragraph to facilities under the jurisdiction of the Commission. That is facilities that are a part of the interstate gas business. But, in sections 6 (a), 6 (b), and 7 (a), there is no such limitation, and unless that is read in by inference, which is stretching it a good deal, unless that limitation were read into those sections, there is in those sections a conference of authority on the Federal Power Commission over intrastate business and intrastate facilities.

Now, possibly the person who drew this bill did not have in mind that a company may be engaged both in interstate commerce and in intrastate commerce, and that the facilities used for interstate commerce may be entirely separate from the facilities used in intrastate commerce; but that is a fact. There are cases where a company has developed a natural-gas field and the facilities, connecting with that field, and the distribution of the gas is in interstate commerce. It crosses a State line, but the company also has wells in other territory connected with pipe lines going to a local distributing company, and that is not interstate commerce. That is intrastate commerce, and over which the State has control.

Now, if sections 6 (a), 6 (b), and 7 (a) were so modified as to carry into the law the language used in 7 (b), it would remove the objections that I am speaking about, but inasmuch as it is put in 7 (b), the inference would be, ordinary construction of the statute, would be that 6 (a), 6 (b), and 7 (a), not having it, are not bound by it.

Mr. COLE. Mr. Chairman——

The CHAIRMAN. Mr. Cole.

Mr. COLE. May I ask a question there? In 7 (b) are you not dealing with facilities, and when you read sections 6 (a), 6 (b), and 7 (a) you naturally go back to the definition of what a natural-gas company is before the provision applies?

Mr. MALTBIE. Yes.

Mr. COLE. And are limited absolutely in this case to what we define as natural-gas companies. Does that not cure your objection?

Mr. MALTBIE. I think not. I tried to make the point, without spending too much time on it, that power is not conferred by a company. The Federal Constitution gives power over a thing. That is interstate commerce. And, a company that is engaged in interstate commerce is not completely, in all of its business that it does, necessarily under the regulation and administration of the Federal Government.

So as I said, a company comes under the jurisdiction of the Federal Power Commission for the business of interstate commerce, but if it does interstate commerce, the mere fact that one company does both things, does not place the intrastate commerce under the jurisdiction of the Federal Government.

The CHAIRMAN. Your view is that for investigative purposes where it is confined to that, this carries the investigating power, I take it.

Mr. MALTBIE. I think unquestionably it does, because the property is used, let us say, in part, like an office building where the offices are for the part of the company that is engaged in interstate commerce and the part for intrastate commerce. Undoubtedly the natural construction either for the Federal Government or for the State would permit either one to investigate the operations of that property that was used in part in intrastate commerce on one hand and interstate commerce on the other.

I am raising no question about that. I am raising the question about property that is not, by any reasonable construction of interstate commerce, under the jurisdiction of the Federal department.

Mr. WADSWORTH. Mr. Chairman——

The CHAIRMAN. Mr. Wadsworth.

Mr. WADSWORTH. Have you suggested any amendments or corrections to those sections, Mr. Maltbie?

Mr. MALTBIE. I have not.

Mr. WADSWORTH. That is to sections 6 (a), 6 (b), and 7 (c).

Mr. MALTBIE. I have not. I would be glad to do so if you wish.

Mr. WADSWORTH. As one member, I would like to have them.

Mr. HALLECK. I think that that should be done.

Mr. MALTBIE. I will submit them. Will you give me a week, Mr. Chairman, to submit them?

The CHAIRMAN. Well, we would be glad if you would do it as soon as you can.

Mr. MALTBIE. I will. I want to submit them to counsel before I turn them in.

Mr. BOREN. Mr. Chairman——

The CHAIRMAN. Mr. Boren.

Mr. BOREN. In substance, what you are indicating was that this clause subject to the jurisdiction of the Commission should be inserted in the language of subsections (a) and (b) of section 6, and subsection (a) of section 7.

Mr. MALTBIE. Or words to that effect. You might have to change the wording, because the other sections are worded a little differently; but that is the idea, precisely.

I wish to say this, that we have had some experience with attempting to regulate interstate business, in regulating the rates of companies that are distributing companies in the State of New York and who get their gas from over in Pennsylvania.

Now, that involves only two States in this case. That is New York and Pennsylvania. But unless the Pennsylvania company is willing to place at our disposal their records and property, there is no way that we can get them; and if they refuse, of course, no subpena can run outside of the State. Their books and records are outside of the State and we cannot reach them, and if the Federal Government undertook to deal with, adequately, with interstate commerce in such instances, it would be of great help to us.

We have found ourselves almost stymied by these companies that are outside the State.

Mr. BOREN. That refers back to subsection 5 (b), and Mr. Burton, I believe it was, gave a considerable statement, in his evidence, showing where there was need for the subsection, and I asked him the question there in connection with one that you mention here of cooperation between the State commission, if that would not be a practical solution of that problem, and he pointed out the language necessary in subsection 5 (b) which was necessary to meet that.

Mr. MALTBIE. I do not think so. In the case I mentioned, the Federal Power Commission, if given adequate powers by the Congress, the Commission would determine, investigate, and determine the reasonable price of gas at the end of the New York line. They would determine that without any help, and without any question this bill will provide that. Yet outside of 5 (b) this bill provides that now that they determine that price at the end of that line.

Now, that is their business, so far as we are concerned, that seems to be res adjudicata. We have to accept that decision, because a Federal department is acting in something that it has jurisdiction over, unquestionably, interstate commerce.

It decides that price at the end of the line.

Now comes in the distribution company which we have control over, go into all of the things that have to be gone into in determining a rate. You start with the price decided by the Federal Power Commission and we do the rest, taking it down to the consumer.

That leaves the Federal Power Commission in its own field to act as it may be authorized. It leaves the State commission in its own field to act as it is authorized.

Mr. BOREN. If the Federal Government does take this burden and give you the reasonable rates at the end of the line, engaged in interstate traffic, you no longer have any need for information concerning the Pennsylvania end of the problem so far as your State commission is concerned, would you?

Mr. MALTBIE. That is right unless, perchance, the operating company might happen to be a Pennsylvania company, but we do not look with favor upon that. Assuming that the company is a New York company, we have got all of the authority we need right there.

Now, section 8. I will try to hurry through. Section 8 (a), page 11. The language that I think there is objected to is about two-thirds of the way down the page. It provides that:

> The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited.

I am aware of the fact that this language is, as used here, in other acts of Congress regulating Federal departments, but a company exclusively operating in interstate commerce would not be touched by the State commission and there would be no conflict of jurisdiction.

I said exclusively operating in interstate commerce, because no State commission then would have any jurisdiction over it. But, the trouble will arise where a company is engaged both in interstate commerce and intrastate commerce.

This is not limited. This provision and this whole accounting section is not limited to corporations engaged exclusively in interstate commerce. It covers corporations engaged in intrastate commerce as well.

Now, it certainly is right and proper for the State commission to regulate some of these things in the case of intrastate commerce, but this gives jurisdiction over the company and over things that the company does and it is not limited to interstate commerce.

In New York, the New York commission has authority in this very language—in fact, I think this was taken into the Federal acts from the New York commission's act, the New York public-service law.

What happens? We have jurisdiction in almost the precise language to do the same thing and this is not limited to interstate commerce.

I am perfectly aware that when you come to a company doing business both interstate and intrastate that any one act or many of the acts may include items relating to interstate and intrastate; but suppose the Federal department says that an account should go into one account; suppose that the State commission says that it should go into another account? Facing that situation we have in those cases, where the companies are predominately interstate commerce and we have said to the Federal department, take it. We will keep our hands off even though the laws gives authority; but it does seem that it is rather stretching it a bit to authorize a Federal Department to go down into the very items of expenditures in a company doing, let us say, 80- or 90-percent intrastate business.

If this section were limited to interstate commerce and the business done by a company in interstate commerce, there would be no conflict; but it is not. It includes interstate commerce and intrastate commerce.

Mr. BOREN. If it included both, you think there would be no question about it?

Mr. MALTBIE. There is no doubt about it.

When, as I say, we meet a situation of that kind, we say hands off, turn it over to the Federal department. Take the American Telephone & Telegraph Co. That is primarily an interstate commerce company. It does very little business in the State of New York. We have said to the Federal Communications Commission, "You can have the A. T. & T. We will issue no orders against the A. T. & T., regarding matters over which you have no control."

But, this goes way to the other extreme.

There are just one or two other things upon page 6, and in line 17, there is a limitation of 5 months for a suspension. Five months plus the initial time when it would go into effect that we have found to be too short. If you have got a large company, a large case, that is not sufficient.

Now, there is no provision in here regarding temporary rates. I think Mr. Booth, of the Illinois commission, made a suggestion yesterday suggesting that a section copied after the law in the State of New York regarding temporary rates should be added here, and we have found it very advantageous. We have found that section in the State of New York to be advantageous and it has been upheld by the court of appeals, so that it is the law in the State of New York at the present time.

There is just one clause in his suggested language which does not meet with my approval, and that is the sentence relating to no deduction for depreciation in case the sinking method is used. I do not want to start on the question of depreciation, because I know that I would get away beyond your time this afternoon. But, that sentence ought to be eliminated and if any of you are interested, I will be glad to sit down and explain the reasons. I will guarantee that I can show you.

Mr. BOREN. You do not believe then that line 9, page 7—in cases which may arise providing for refunds—you do not believe that refunds or the refund method should be adopted or would be as successful as a temporary rate?

Mr. MALTBIE. I do not. One of the criticisms against regulation everywhere is that it takes so long to get anything done. Complaint is made and then an investigation is had which involves the taking of testimony and with a large company it strings along and the best that you can do is for 3 or 4 years. The public says that nothing happens. Regulation is no good.

Now, the New York law permits us to issue a temporary order immediately. If we get the rate too low, below a fair return as the investigation shows, then it is adjusted in the final rate. That has worked satisfactorily and as I say has been upheld by the court of appeals.

The CHAIRMAN. In brief, how do you fix your temporary rate?

Mr. MALTBIE. The temporary rate is fixed upon the basis, according to the law, of the original cost of the physical properties, less depreciation.

Now, we make an investigation. In some cases the books of the company show the original cost of the property and we have an order out now which will require all of the utilities outside of the railroads in the State of New York to produce an inventory and show the original cost of their property before the end of this year.

So, if the book shows we get original cost from the books. If the books do not show we are allowed to estimate the original cost.

Also the depreciation, if the books show accrued depreciation, we take that from the books. If we do not think that they do, we can quickly make an estimate or fix the minimum amount that we will deduct and deduct that from the original cost, getting the original cost less depreciation, taking all of the physical property, material, supplies, as well as plant. Then, an analysis of the operating expenses show what the revenues should be and we can fix a rate of return on it and do fix it. So far there has not been a temporary rate fixed on that basis reversed in the State of New York; not one.

The CHAIRMAN. In effect you give consideration to every fact that you do in fixing the final rate, but you act hurriedly and save yourselves as to the constitutional question in the final rate where you pay the company any deficiency that may be found due.

Mr. MALTBIE. No, Mr. Chairman; I have not included reproduction cost less depreciation.

Now, according to the law of the land original cost and reproduction cost less depreciation must be taken off of each one and must be considered. There are a number of other things that might be considered before fixing a final rate, but in a temporary rate we do not need to give any consideration to reproduction cost less depreciation; none at all.

The CHAIRMAN. Does not the fact that you subsequently award the utility the proper amount of compensation in case you undercompensate them in temporary rates save the constitutionality of your method?

Mr. MALTBIE. Unquestionably it does. The opinion of the Court of Appeals pointed that out.

Mr. COLE. Mr. Chairman——

The CHAIRMAN. Mr. Cole.

Mr. COLE. Going back for a moment, do I understand you oppose the accounting provisions applying to the companies which are engaged partly in interstate and partly in intrastate business?

Mr. MALTBIE. Do I oppose them?

Mr. COLE. Yes. You do not want section 8 (a) to apply to any company which has, say, a minor part of its business in interstate commerce?

Mr. MALTBIE. I do not think it is necessary to go that far, Mr. Cole, because so far we have been able to get together, the States with the Federal Communications Commission, and substantially with the Federal Power Commission on a system of accounts, a common system of accounts. Now, if that can be done that will avoid the constitutional question or any other question that might be raised.

Mr. COLE. Does not the operation of this section ultimately lead to the very laudable objective; that is, uniformity of accounting, rates of depreciation, and so forth, for these companies engaged in interstate activities? Your State commission rulings might be a

model for the Federal Power Commission to follow. Other States would not. The holding-company bill, the Federal Power Act, and others which at this minute I do not recall provide for substantially the same thing, to bring about some uniform accounting system.

Mr. MALTBIE. I think you may rely for the time being on endeavors to get uniformity so far as an accounting system is concerned.

What I was objecting to particularly was where it comes to a specific case. You are going to determine that a specific item shall go into this account or into that account. There you are going further than you need to for uniformity.

Mr. COLE. Well, that would impose upon the company two items, but would not interfere with what the State commission would require a company to do?

Mr. MALTBIE. Let us see——

Mr. COLE. Well, that is specifically exempted in this provision. What the Federal Power does under section 8 (a) shall not relieve any company from keeping such accounts as the State commission requires.

Mr. MALTBIE. But what I am talking about specifically is to be found in lines 15 to 19.

Now, suppose that a company makes an expenditure and the company says that it is operating expense, but suppose that the State commission says no, that it is not operating expense, that that should be charged to surplus. It should not be charged to operating expense and the State commission orders a company to take that out of operating expense and put it into surplus. Now, then, the Federal commission comes along and, just for the sake of illustration, let us assume that the Federal commission says no, that is operating expense.

Now, what are you going to do with it? How are you going to construe that clause about the company shall keep the accounts as required by State commissions? Does that eliminate the Federal Commission entirely? It cannot be in both places. It has got to be in one place or the other, and it would mean if you attempted to have one hearing to cover it in the Commission, that would mean the Federal Power Commission whenever this question came up in a rate case or anywhere else, that would mean that the Federal Power Commission would have to sit in with every State commission wherever this question arose.

In some case where you required, before anything is done, the approval of the State commission and the Federal Commission, then, of course, if it did not get the approval of both, the thing would not be done, but that would not apply here. The item has got to be somewhere, and it cannot be in two places.

The CHAIRMAN. I suppose the ideal thing would be if the State commission and the Federal Commission could agree on an accounting system. Is that a practical viewpoint?

Mr. MALTBIE. Yes; that is what I am trying to say in response to response to the Congressman's question of a moment ago, Mr. Chairman. We have been getting along, the States, with the Federal Communications Commission and the Federal Power Commission, and we have gotten in substantial agreements on accounting systems.

I think the objections which I might have raised from the point of view of theory to the rest of this section might be waived for the time being, because the conflict has not developed. We have gotten together. We did not get together with the Interstate Commerce Commission, but we have got together with the Federal Communications Commission and with the Federal Power Commission; but the trouble arises just in those few lines. That is what I am trying to emphasize and to say that I think you may safely let the rest go to a mutual cooperation.

Now, the same thing might be said as to specific charges to depreciation and amortization.

Unquestionably the State commission would have the authority to fix rates of depreciation in intrastate rate cases. There is not any question about that. And there is not any question but what the Federal Power Commission would have the power to fix depreciation in interstate rate cases for the purposes of that rate case; but section 9 goes further and says that they must take the rate of depreciation which the Federal Power Commission fixes, and the Federal Power Commission might fix a rate on property nine-tenths of which is intrastate. That looks to us as if the tail were going to wag the dog, and we would rather have the dog wag the tail.

So I think that a change might be made there, and I will submit to take care of that.

Mr. PETTENGILL. Have you any opinion on 7 (c)?

Mr. MALTBIE. Yes; 7 (c) or its equivalent has been in the law of the State of New York so long—that is about 30 years—so long that everybody is becoming reconciled to it or given in, one or the other.

There are a few instances; there are instances where a municipality can create a competing plant without the approval of the public service commission; but no company under our jurisdiction engaged wholly in interstate business—and I have in mind now the railroads which are engaged in both—no company engaged in intrastate business in the State of New York, in gas, or railroad business, electricity, water, steam, telephone, can build a plant or exercise a franchise without a certificate of convenience and necessity.

Some municipalities, but no company can. All that that argues is for or against giving similar power to the Federal Government.

I think the most important question in this whole thing is not touched upon in this bill, and that is the question of waste of our natural resources; and if a certificate of convenience and necessity must be secured from a Federal department in order to conserve our resources, I am for it. I am for anything that is at all reasonable that will conserve our natural resources—gas resources we are talking about now.

I think—my personal opinion is—that that certainly will help. I do not think it clears the case up entirely, but it will help.

Now, you have asked——

Mr. PETTENGILL. Just a minute right on that point.

There is just so much gas—no one knows the number of cubic feet—but theoretically there is an unknown quantity of cubic feet of natural gas in the reservoirs of the earth. How will you conserve that, whether it is sold to the customer by one company or two companies competing with each other?

Mr. MALTBIE. The tendency is, of competition, to get that gas out just as quickly as they can. Now, these pools that are tapped are often tapped not by one company or a company or companies controlled from one source, so that they can determine the rapidity with which it will be taken out by each company, but they are often tapped by persons or companies not under the same control.

Now, as this gas flows in the sands, to a considerable extent, when you tap a reservoir, if you get all of it right out at once you have got it. The other fellow has not. It is in there. If he does not take it out, so far as he is concerned, he does not get it. Consequently there is an incentive to get it out as soon as you can, if you have got competitors in the same pool, and that tends to selling the gas not for its most economical and advantageous uses, from a public point of view, but from an individual point of view.

Now, that is not theory. We have some cases—we had one right in New York just recently, the case of the Cabot Co., which asked permission and had to get a certificate of necessity and convenience. Some of the pipe-line companies engaged in interstate commerce in New York had gone ahead and built without getting any certificate. They said that they were not under our commission and were not under the Federal Government, because the Federal Government did not have any commission, so that they were free to do as they pleased.

But the Cabot Gas. Co. has a franchise. You practically have to cross streets. If you do not, you run up them. So they have to have a franchise to operate in the State of New York.

And they came to us. They were getting part of their gas over the Pennsylvania line in Pennsylvania. They wanted to sell to the Eastman Kodak Co. in Rochester, and they wanted to sell to one or two other companies, and incidentally small sales to others.

They came to us to get the certificate of convenience and necessity. We wrote an opinion in which we pointed out we, and no one else, at the present time could control the use that was being made of natural gas, and if it did not go into New York, it goes somewhere else. Consequently it was natural for us to say that the Eastman Kodak Co. could have it.

Now, the Cabots were outside the circle of some of these companies, and they have their own money. They have plenty of money, and they came before us, and we gave them the certificate, and partly for the reason or because we did not have any means of controlling, conserving, the natural-gas supply. If we had had, or if there had been some means of serving, I do not know whether we would have given them the certificate or not.

Mr. PETTENGILL. So you think that the Federal Power Commission can determine the question as to whether convenience or necessity would be served by issuing this certificate? But, as to the question of natural resources entering into the consideration, the statute does not say so.

Mr. MALTBIE. I know it does not say so, and all that I am saying is that I think it will help in that direction; and if it will, I am for it.

I think probably you gentlemen—I know you have—have this question of conservation in mind and possibly you have in mind next year or later, going further in this field and attempting to do something to conserve our natural-gas supply. The trouble is now the States cannot do it. The only way that the States can do it is through

some compact that we tried in New York. We could not get a compact. It would not work. We could not get one at that time with the State of Pennsylvania.

Mr. MARTIN. Mr. Chairman——

The CHAIRMAN. Mr. Martin.

Mr. MARTIN. Mr. Maltbie, we have had a daily diet here for the last 4 years about Government regimenting business, about the Government interfering in business, growing out of all of this New Deal legislation. It looks to me that here we are going a step further and absolutely depriving a man of the right to develop and use his own property and resources.

Mr. MALTBIE. You certainly are going to put him under regulation.

Mr. MARTIN. A man has a gas field or has an oil field and he is able to develop it, and he can find a market for his product, and he goes to the Government and asks for a certificate to do that, and the Government says, "We do not need it. The public does not need that gas or oil." And he cannot develop it. A man cannot use his own property or own resources. You understand, I am not objecting to that. I am just pointing out the inconsistency of the thing.

The CHAIRMAN. Of course, this bill does not go that far. He can go into a new field.

Mr. MARTIN. You can go that far under section 7 (c), can you not?

The CHAIRMAN. No. You can go into a new without that.

Mr. PETTENGILL. That is, he can go into a new market?

Mr. WADSWORTH. He can go into an old market.

The CHAIRMAN. He can go where they need it. You do not have to have a certificate in the State.

Mr. MALTBIE. I do not think that you have to have a certificate in the State.

Mr. BOREN. I do not see how section 7 (c) is a practical conservation section at all.

Suppose that you are talking about the same field, you have different costs of operations in the same field. They cannot all market their production, one company is marketing it, evidently transporting it, purchasing it from another company——

Mr. MALTBIE. Of course, if you show that a company is not getting to market, it cannot do anything with its gas.

Mr. BOREN. And furthermore, under the present system—I suppose it is true in most oil and gas fields—it certainly is true in the West. We are just letting it go to waste. A great deal of the gas supply is wasted. I think that it was pointed out here this morning that something like 80 percent of it is simply being wasted instead of being used. If the restrictions are written into the law as indicated in section 7 (c), would not that have a tendency to curtail waste, of this 80 or 90 percent?

Mr. MALTBIE. It will not, if you are not going any further than 7 (c). I say that 7 (c) does not begin to adequately deal with what seems to me to be the most important thing we have, and that is waste of natural resources. If that is all, why, 7 (c) is entirely inadequate, in view of that. I simply said that it looks to me like a step in the right direction. Perhaps it is not a very long stride. Perhaps it is just edging along a little bit; but we have had it so long

in the State of New York that we are accustomed to it. It may be a bad thing, but it seems to work very well.

Mr. PETTENGILL. I am not arguing that it is a bad thing. Is it necessary to duplicate it? You see my point?

Mr. MALTBIE. Yes, I do.

Mr. PETTENGILL. I have listened to you with profound interest, because you are clearly informed on the subject; but I confess that I cannot follow you that there would be much conservation of resources in the ground through any grants or failure to grant a certificate to supply a market that is already being supplied by a competitor. I cannot see that, if it goes into illumination, or house heating, or industrial heating. Those are all recognized uses for natural gas.

The manufacturer of carbon black or something like that, might be a very inefficient use that can be controlled at the factory where the carbon black is being made. It does not require a Federal certificate of public convenience to regulate the use of natural gas for inefficient uses.

Mr. MALTBIE. Well, it perhaps would not reach it, because, of course, natural gas can be used for carbon black or any other unwise purpose without getting into interstate commerce at all.

Mr. PETTENGILL. I would like to make one correction. I am sure that Mr. Mapes in starting the ball rolling had an entirely different situation in mind, but it is going into this hearing today that 90 percent of the natural gas is being wasted. That is not true. That 90 or 97 percent, Mr. Mapes, refers only to gas wasted when you manufacture gasoline out of it.

Ninety-five percent of the B. t. u.'s go into the air when you manufacture gasoline from natural gas. Except as to that one point there is no warrant in saying that 90 percent of the gas is being wasted.

Mr. MAPES. Ninety-seven percent of that that is being used in the manufacture of gasoline.

Mr. PETTENGILL. That is right.

Mr. MALTBIE. No such percentage of waste is taking place in the State of New York.

Mr. PETTENGILL. No.

Mr. MALTBIE. There is very little in the State of New York.

Mr. PETTENGILL. My information is that out in the Panhandle there is not very much gas being wasted today, relatively.

The CHAIRMAN. We thank you, Mr. Maltbie. We will be glad to receive your suggested amendments.

Mr. MALTBIE. Thank you.

The CHAIRMAN. We will hear Mr. Gandy.

STATEMENT OF HARRY GANDY, JR., REPRESENTING THE NATIONAL COAL ASSOCIATION

Mr. GANDY. Mr. Chairman.

The CHAIRMAN. Will you give us your name and representation?

Mr. GANDY. Harry Gandy, Jr. I am a member of the staff of the National Coal Association which is the national organization of bituminous coal-mine operators, representing both captive and commercial mines in every producing field in the United States and just have a short statement. We filed a statement with your committee last year, and I want to put it in the record again this year.

In the call of these bills for hearing, it was noted that you wanted to limit it to new matter insofar as possible, and for that reason, in order to conserve the time of the committee, I desire to resubmit for the record the statement made by our executive secretary, Mr. John D. Battle, last year, when a bill of the same nature was under consideration.

I desire to make it clear, beyond any chance of misunderstanding, that the statement is not a commitment either of approval or of opposition to the proposed legislation, it merely being for the purpose of pointing out to your committee certain defects which we feel the bill contains, chief among which is the exemption of the sale of natural gas for industrial use only. We have pointed out that with the exemptions that are seemingly provided for in the bill itself, the bill leaves scarcely anything to control. There is no need for me to go into those exemptions, because they are all explained entirely in the statement.

I desire to submit this statement for the record.

The CHAIRMAN. You may extend your remarks or file the statement.

Mr. GANDY. Thank you.

STATEMENT OF JOHN D. BATTLE, EXECUTIVE SECRETARY, NATIONAL COAL ASSOCIATION, BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, HOUSE OF REPRESENTATIVES, ON H. R. 11662, A BILL DESIGNED TO REGULATE THE TRANSPORTATION AND SALE OF NATURAL GAS IN INTERSTATE COMMERCE, APRIL 7, 1936

As a representative of the bituminous coal-mining industry I approach a discussion of this bill, which is apparently designed to regulate the natural gas industry by the Federal Government, with some misgivings. I do not come here as a spokesman for one industry proposing that you regulate another industry, even though that industry is a competitor of ours. I come here for the purpose of pointing out to you certain defects in this bill which in my opinion make it practically nil insofar as benefiting any one is concerned.

I must, of course, consider this bill as having been introduced in good faith and I therefore treat it most seriously. It is said to be for the purpose of regulating the transportation and sale of natural gas in interstate commerce and then in section 1, it seems to me, when the exceptions are taken into consideration, there is very little, if anything, left to regulate.

For instance, let us analyze section 1 briefly, and that is about the only section in which I am interested.

The bill first declares the business of transporting and selling natural gas for ultimate distribution to the public to be affected with a public interest and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

I am not a lawyer. Therefore, I do not discuss the question of the Federal power in the premises. I merely wish to point out some of the practical features in connection with this proposed law.

Then the bill provides that it shall not apply to the distribution of natural gas moving locally in low-pressure mains or to the facilities used for such distribution or to the production of natural gas. Thus production control is eliminated. I am not clear on the distinction between low-pressure and high-pressure mains—there is nothing in the bill to indicate what the dividing line is; it may be thoroughly understood by those familiar with the industry—but at least it does not apply to natural gas moving in low-pressure mains. Likewise it does not apply to the distribution locally, and then there is a further exception to the effect that it does not apply to the sale of natural gas for industrial use.

Consequently the only phase of the industry, as I see it, that it is proposed to regulate is after the gathering ceases and the gas is turned into a main line, so to speak, until it reaches the city gate, and only then when it is moving in high-pressure mains across State lines.

If I am wrong in this interpretation of the bill, I hope that I may be corrected now. But if I have properly construed the bill, then if this high-pressure main line goes directly by 25 manufacturing plants, there is nothing to provide for any regulation of the price that may be charged for this gas, as gas for industrial use is exempted from the bill. If there were some domestic consumers along the line not subjected to State or city regulation, I presume the price of natural gas to them would come within the provisions of this bill, and if there were governmental buildings, such as hospitals, Army posts, etc., located along the pipe line not subject to city or State control, I presume the price to those institutions under this bill could be regulated.

Now let us determine who uses natural gas. According to the United States Bureau of Mines—and I wish to put this statement of the Bureau in the record if it has not already been placed there by others—31 percent of the natural gas is used for field purposes, 16 percent by domestic consumers, 5 percent by commercial consumers, 13 percent by carbon-black manufacturers; 7 percent by electric public-utility power plants, 5 percent by petroleum refineries, 2 percent by cement plants, and 21 percent for other purposes. The other purposes are not defined, but I presume they include blast furnaces, glass works, Government buildings, hospitals, barracks, etc., brick and clay burning, general hospitals, hotels, and small manufacturing plants not otherwise described.

To analyze further these figures of the Bureau of Mines: 31 percent used in field production, as I construe the bill, would not be subject to any regulation; 53 percent would not be subject to regulation, as it is for industrial use. I cannot distinguish between industrial and commercial use. This leaves only 16 percent used for domestic consumers, and if I understand the general operation of the industry, by far the greater portion of this 16 percent would be distributed locally by local plants and not subject to this bill. Therefore I repeat what I said at the outset; under the very provisions of the bill itself there is practically nothing left to regulate when the exceptions are taken into consideration.

The figures from the Bureau of Mines are for the year 1934 and are found in their mineral market report, no. M. M. S. 414, dated October 29, 1935. This same report points out that there has been a large increase in the production and use of natural gas in recent years and states that the major portion of the recovery in total distribution in 1934 was due to a material gain in demand for industrial purposes. The report likewise shows a large increase in the number of domestic and commercial consumers 1934 over the previous year.

Attention is called to the fact that the average value at wells per thousand cubic feet in 1934 was 6 cents, and the average value at point of consumption per thousand cubic feet was 22.3 cents. I take it from this report that this covers all of the gas, and I particularly call your attention to the fact that for domestic, including commercial distribution, which would account for only 21 percent of the total, the average value at point of consumption was 68.6 cents per thousand cubic feet. So it would seem that the domestic consumer is paying a very high price for gas and industrial users are paying very low prices.

Natural gas has displaced millions of tons of bituminous coal throughout the Nation. It is our opinion that natural gas is being sold for industrial purposes at prices that are reasonably low, while at the same time the domestic and household users are paying prices that are several times greater than those for industrial users. Our industry is interested in this phase of the business, that is, the industrial use of natural gas, as it comes in direct competition with coal and by practices that we question. We feel that the competition is unfair. It is reported to me that it is not an uncommon practice for the manufacturers of natural gas to call on an industrial plant and offer to furnish heat or power at 10 percent less than thel are paying at the time without even ascertaining what the fuel bill is. I submit that this kind of competition is unfair and cannot be met on any sound business principle.

There are only about 50,000 employees in the natural-gas industry throughout the country, according to the Bureau of Mines report for 1934. The bituminous-coal industry employs around 500,000 men directly in the mines and as many more indirectly in transportation, distribution, and sales forces. Thus there are several million people entirely dependent for a livelihood on the bituminous-coal industry and your attention is directed to the fact that some 60 to 65 cents out of every dollar paid for the mining of coal goes direct to labor. We do not know the labor cost in connection with natural gas, but it must be very small compared with coal. About 50 cents out of every dollar taken in by the railroads goes direct to the payment of wages. By far the greater portion of coal moves by rail transportation. Taking into consideration those employed directly in the mining industry and those industries allied

or associated with it, it is estimated that for each ton of coal displaced by some other fuel or form of energy, a person either directly or indirectly employed in the coal industry loses a day's work.

It is our information that gas is being sold to some industrial concerns in the city of Chicago for 12½ cents per thousand cubic feet, whereas the household rate is about five times greater, and in this connection it must be borne in mind that natural gas has a higher B. t. u. value than manufactured gas. There are certain special rates, we understand, in effect in Chicago from March 1 to December 1 which will average about 18 cents per thousand cubic feet.

The Government buys a considerable quantity of gas, the last report indicating that it purchased 2,385,389 cubic feet in 1930. There has been a tremendous increase in the use of natural gas by the Government since 1930 but figures are not available. It is noted that at some of its Army posts, in sections far removed from the gas fields, it is sold as low as 20 cents per thousand cubic feet. In some buildings in Alabama the rate is as low as 16 cents; in Iowa, 14 cents; and in West Virginia, 15 cents. Even at Fort Sam Houston, Tex., where the price is 21 cents for industrial use, the domestic rate is 55 cents. In some instances there are sliding scales, the larger the quantity the lower the rate.

These instances are called to the attention of the committee merely to emphasize the fact that this is a competition that we feel is altogether unfair. Therefore, I say to you that if you are going to regulate the natural-gas industry, why exempt the one class of business that destroys labor? Why exempt the industrial gas? Why take a chance on adding to the cost of gas for domestic use and leave industrial users free to buy at any price? Therefore I repeat that the bill as drawn will accomplish very little good for any one.

The history of all regulation of business is, I believe, that the ultimate cost of the commodity involved is increased. There may be and probably are instances where that is desirable. But I raise the question: Is it desirable to increase the cost to one class of users and leave the larger class of users free to practice methods which, as a competitor, we feel are unfair in many instances, wasteful and generally speaking not helpful towards recovery? Specifically, gentlemen, I have to suggest that in the interest of fair play, insofar as it may be possible in this measure, that you strike out the following words in line 12 on page 2: "or for the sale of natural gas for industrial use only."

Mr. EICHER. Mr. Gandy, for my information, what is a captive mine as distinguished from a commercial mine?

Mr. GANDY. Well, there are two lines of thought, technically, as to what a captive mine is, but in general a captive mine is a mine that produces coal which the owner of the mine consumes. Now, there are two thoughts about this, one being that it has to be the same legal entity that produces and consumes the coal. The other is that where the mining company is a wholly owned subsidiary of or is controlled through stock ownership by the company consuming the coal, then that, too, is captive coal. But, essentially, it is a mine where the coal is consumed by the one who produces it.

Mr. EICHER. And not sold?

Mr. GANDY. That is right.

STATEMENT OF W. A. DOUGHERTY, NEW YORK, N. Y.

The CHAIRMAN. We will hear Mr. Dougherty.

Mr. DOUGHERTY. Mr. Chairman and gentlemen of the committee, my name is William A. Dougherty. I am an attorney. My address is 30 Rockefeller Plaza, New York City. I am connected with the management of some natural-gas pipe lines, one of which is the Colorado Interstate Gas Co., which runs through Mr. Martin's territory. Another is the Mississippi River Fuel Corporation. That takes gas from northern Louisiana to St. Louis, Mo., East St. Louis, Ill., and Alton, Ill.

A third is the Interstate Natural Gas Co., which operates from northern Louisiana into Mississippi and then again into Louisiana,

entering at Baton Rouge and connecting there with a nonaffiliated pipe line that extends on to New Orleans.

Also a company called the New York State Natural Gas Co., that produces gas in the northern part of Pennsylvania and transmits it by pipe line into New York State, selling it wholesale to the Syracuse Lighting Co. and to some other distributing companies that serve consumers in Ithaca, Portland, and Geneva, and other communities in that area.

I merely wish to suggest certain amendments that have been, some of them, suggested to me by other people in the natural-gas business. None of them change the purpose or underlying theory of this law. They clarify and in some respects change some provisions that we think should be changed. I have had them typed, and will pass them around to you, and I will refer to them in the order that they are on the paper.

(The proposed amendments above referred to are as follows:)

Page 2, line 13: Change period to comma and add "or for resale for industrial use only."

Page 4, line 24: Change period to semicolon and add "provided that in making its rates or charges consideration may be given to the quantity taken, the time when used, the purpose for which used, and other relevant factors."

Page 7, line 19: The word "Restoration" should be "Transportation."

Page 8, line 7: Add "Such order shall not be made until after a finding of the fair value of the property of the natural gas company used or useful in rendering the service covered by the schedule under consideration."

Page 10, line 3: Change period to semicolon and add: "*Provided, however*, That facilities may be abandoned without obtaining such permission, approval, or finding, if service is not thereby impaired or if substitute facilities will be installed."

Page 13, line 24: Insert after the word "property" a comma and the words "subject only to State jurisdiction,".

Page 26, line 8: Substitute for lines 8, 9, and 10 the following: "The filing of an application for rehearing under subsection (a) of this section shall operate as a stay of the Commission's order pending action of the Commission on such application."

Page 28, line 12: Strike out the words "rule, regulation, restriction, condition, or".

The first one is on page 2, line 13. I have suggested that there be added these words: "Or for resale for industrial use only".

And the purpose of those words, the addition of those words, is simply this: The bill as drawn applies to the sale of natural gas for resale and then contains a provision that excludes the fixing of rates for the sale of natural gas for industrial use only.

Gas sold for industrial use is sold in two ways: First, by the pipe line itself direct to the industrial customer without the intervention of a distributing company, and, secondly, the gas is sold by the distributing company, which gas is purchased by the distributing company from the pipe line company.

That gas is sold under a separate agreement or a separate rate schedule than applies to the gas that is sold for general use and therefore is a separate transaction.

There is a question in the minds of some of the people in the industry as to whether or not the language as it is now in lines 12 and 13 applies only to the sale of gas that is made by the pipe line directly to the industry and does not include in the exclusions the gas that the pipe line sells to a distributing company for resale for industrial purposes, and the purpose of the addition of these words is to make clear that all gas that ultimately goes to industrial customers, purchased under the separate rate or a separate contract, for that purpose is not within the provisions of his legislation.

Mr. MARTIN. Is there a considerable volume of that character of resale?

Mr. DOUGHERTY. Oh, yes, sir; most of it, Mr. Martin, that is sold is sold in that way. For instance, the Colorado Interstate Gas Co. sells direct to the Colorado Fuel & Iron Co. Of course, that is a tremendously large consumer. But, in Denver, all of the industries are sold gas by the local company, the gas being purchased from the pipe-line company. The same is true of Colorado Springs.

Most of the pipe-line companies do sell gas, as I have indicated, although some of them sell to a number of industrial consumers direct.

The second change I have suggested is on page 4, in line 24, the addition of some words which some of the people in the industry think are proper; that is, to change the period to a semicolon and add:

Provided, That in making its rates or charges consideration may be given to the quantity taken, the time when used, the purpose for which used, and other relevant factors.

That is in respect to section 4 (b), which prohibits any undue preference or advantage and requires the maintenance of no unreasonable difference in rates and facilities. These words which I propose merely state some of the things that a company may take into consideration in fixing rates at different places, namely, the quantity and the time when used, which has a lot to do with the load factor on the line, the purpose for which used, and any other relevant factors that may exist.

It may be said that this is addition of words that are not absolutely necessary—and I rather agree with that—but it is felt it would be helpful, even though the Commission, under subsection (b) as it now reads, could take those things into consideration.

On page 7, the typographical error in line 19, the use of the word "restoration" has already been called to your attention.

I would like to suggest that instead of using the word "transmission" the word "transportation" be used, as it has already been used through the bill, and that is the terminology of the industry rather than transmission, which, I think, is used more in the electrical industry than in the gas industry.

On page 8, line 7, we have suggested a sentence that probably does conflict with the idea of a temporary rate being put into effect before a complete finding on the value of the property of the company has been made.

(The amendment referred to is as follows:)

Page 8, line 7, add:

Such order shall not be made until after a finding of the fair value of the property of the natural-gas company used or useful in rendering the service covered by the schedule under consideration.

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Mr. DOUGHERTY. But without the temporary rate provision containing the saving clause that any deficiency shall be made up in the final rate, we felt it advisable and fair to the companies.

Mr. COLE. Mr. Chairman——

The CHAIRMAN. Mr. Cole.

Mr. COLE. Would that requirement delay the establishment of the temporary rate very long?

Mr. DOUGHERTY. Yes; that would, Mr. Cole.

When we decided to suggest the language that we do suggest for page 8, there was no provision respecting temporary rates in the bill, and, as you know, railroad rates are fixed most of the time without any hearing on value, contrary to the practice that is followed in other types of public service.

And we were hopeful that that method of fixing rates by naming them and then later attempting to justify them would not be followed here, and so we have suggested that the rate which the commission may fix under the authority of section 5 (a) be not fixed until the finding of the fair value of the property has been bade.

Mr. COLE. Has the value of most of the properties, especially the fields—sources of supply—been determined by the State commissions? For instance, in the Panhandle field, has that been appraised by the Texas commission?

Mr. DOUGHERTY. I think not.

Mr. MARTIN. Did you hear Mr. Maltbie's testimony?

Mr. DOUGHERTY. Yes, sir.

Mr. MARTIN. A litle bit ago?

Mr. DOUGHERTY. Yes, sir.

Mr. MARTIN. It seems to me that he discussed the fixing of temporary rates and the elements of cost that were taken into consideration in the first instance, and how it might be rectified later if it were unfair and carried into the permanent rates. Would "fair value" taken into consideration the elements that Mr. Maltbie said were excluded by the New York Commission in fixing the temporary rates?

Mr. DOUGHERTY. I think it would.

Mr. MARTIN. I think he said that he took into consideration only the original cost and depreciation.

Mr. DOUGHERTY. That is right.

Mr. MARTIN. And that there is a great deal more work involved to determine all of the elements which might be required in "fair value", so that there would be a considerable delay and make it much more burdensome in the fixing of temporary rates.

Mr. DOUGHERTY. Well, that is true, Mr. Martin. The provisions here in section 5 (a) do not relate to any power of fixing temporary rates, with a later obligation to correct the injustices that are done, but it has to do with a final rate that is fixed by the Commission and that is why we are suggesting this language, that such final rates shall not be fixed until after hearing has been had in which the fair value has been determined, so that a rate will not be fixed except after that investigation has been made.

I think this is perfectly consistent, if it is applied here to the final rate, even though you do decide to add another section having to do with the temporary rate.

The CHAIRMAN. If we adopt this amendment you suggest, what would be the status of the matter before the Commission in trying to fix the rate?

Mr. DOUGHERTY. Mr. Lea, if you also add a provision giving the Commission authority to fix a temporary rate, then that temporary rate, presumably, would be fixed, but no final rate would be established by the Commission until after the hearing had been held and a finding made on the fair value, taking into consideration all of the things that the law of the land at that time requires to be considered.

The CHAIRMAN. In the absence of a provision authorizing a temporary rate we have a hiatus here?

Mr. DOUGHERTY. I would think so.

The next suggestion is on page 10, line 3.

(The suggested change is as follows:)

Page 10, line 3, change period to semicolon and add:
Provided, however, That facilities may be abandoned without obtaining such permission, approval, or finding, if service is not thereby impaired or if substitute facilities will be installed.

Mr. DOUGHERTY. That deals with section 7 (b), which is the abandonment section and there is the thought in mind of some of the industry that 7 (b) now reads in such a way as to make it impossible to abandon a compressor station or to abandon a section of pipe and substitute for it another section of pipe without having to go to the commission.

The intent, we felt, was that the consent of the Commission on abandonment should be obtained only where some effect on service would result and the addition of this language: "*Provided, however*, That facilities may be abandoned without obtaining such permission, approval, or finding, if service is not thereby impaired or if substitute facilities will be installed", gives the company the right to make temporary abandonments, change in equipment, substitution of pipe lines, and short distances and loops, without having to come to the Commission for those things. And, it seemed quite in line with the intent of the bill.

Mr. BOREN. You use the term "will be installed." Does that not conflict with the provisional time limit and might that not affect the preceding clause?

Mr. DOUGHERTY. Well, you could say promptly installed or installed at once.

Mr. BOREN. You would not object to substituting the word "are"?

Mr. DOUGHERTY. Well, sometimes it might be developed that you wanted to abandon your existing facilities before you brought others into effect; but I do not think there would be any great objection to that. I would say "no."

Mr. BOREN. You would not object then to changing the phrase "will be installed" to "are installed"?

Mr. DOUGHERTY. I think not.

Mr. BOREN. I raise that point, because I think it is possible that a provision as to the time element would nullify your first clause.

Mr. DOUGHERTY. There would be no objection to that, I think.

On page 13, line 24, we want to insert after the word "property" a comma and the words "subject only to State jurisdiction."

We deal there with the question of reserve powers to the State to fix rates of depreciation. A question of conflicting jurisdiction on the

fixing of depreciation can be very serious to a natural-gas company. It might be that the Federal Commission would say to a company that it is engaged in transporting gas into a State and distributing it also and that "You must accrue on your transportation lines" say 4 percent on the value annually, "and must set that aside", that amount aside.

Now, a company may in a rate case, when it is pending before the State commission, be faced with an order of the State commission which says, "We will permit you to collect from the consumer an amount equivalent only to 2 percent of the value of that property annually" and thereby be faced with the right to include in the rate that we collect from the customer a lesser amount of depreciation charge than the Federal Commission is requiring us to set up on the books and to set aside.

So, in this, this is an attempt in this section to fully reserve to the powers of the State commission all of the authority and jurisdiction it does need with respect to depreciation.

We felt that the property, just as Mr. Maltbie has pointed out—that the property is the thing that either the Federal or the State jurisdiction attaches to, and in connection with that property his power of the State commission should be concerned with the property which is under its jurisdiction, and only under its jurisdiction, and then if other property is under the Federal jurisdiction that the rate of depreciation so fixed should apply for all purposes and be binding on all authorities.

We ought not to be in the position of being faced with different rates charged as a result of conflicting orders of the two commissions. We ought to be required to comply with one order and to have that apply for all purposes.

On page 26, line 8, you will find a sentence which has to do with the filing of applications for a hearing before the commission after it has made an order and after having provided in the preceding subdivision for filing of this application for rehearing.

Subsection (b) then provides that the filing of an application for a rehearing shall not, unless specifically ordered by the commission, operate as a stay of the commission's order.

Now, that results in this situation: The commission would make an order either lowering the rate or fixing some duties of the company in some respect, and the company would feel it should not follow out that order but desires to take it into court and so files an application for rehearing. Notwithstanding the fact that the company does intend to go to court on the matter, and this law as drawn would mean, require, that the company would immediately comply. After it got into court, it has the right, under this statute, to ask the court for an order suspending the commission's order, and so it might be that after having been required to comply with the new order you then would not have to comply with it until the court's decision had been finally rendered.

We think it is only fair that if a pipe-line company or natural-gas company does desire to test out in court review an order of the commission it should not be required to comply with that, since it has filed an application for a rehearing and is on the way to the courts; and when it gets into the court it is up to the court to determine whether or not it would have to comply with the order or the order might be further suspended.

Mr. MARTIN. Where is the time limit in the law? Does it provide that after you file an application, institute legal proceedings, and after you file your application, or where is that?

Mr. DOUGHERTY. There is a time limit on page 24, line 22. There is a provision for 60 days after the order of the commission is made on the application for rehearing. You must file your petition in the court, in the United States Court of Appeals.

The final amendment that we have to suggest is in line 12, page 28. That concerns section 20 (b), and our amendment is to take out the words "rule, regulation, restriction, condition, or." This section has to do with penalties, imposition of both fines, and imprisonment. 20 (a) deals with violations of the law itself, and 20 (b) goes to the question of violating any rule, regulation, restriction, condition, or order made or imposed by the commission.

It is the feeling of some of us in the business that in view of the broad powers of making rules and regulations and conditions, that the commission has under this law, that it is rather severe to apply a penalty to the violation of these numerous rules and regulations, even though they knowingly be made, and our suggestion is that subsection (b) be limited to orders of the commission, so that if the commission makes a definite order against a definite company, violation of that would incur the penalty, but that general regulation and rules apply in so many instances that they ought not to be incurred or ought not to carry with it this penalty section.

Mr. COLE. Mr. Chairman.

The CHAIRMAN. Mr. Cole.

Mr. COLE. If the rules and regulations were published and you had timely notice of them, would that suggest any different approach to you?

Mr. DOUGHERTY. Mr. Cole, the only trouble is that the rule-making power, particularly as included by some of the amendments suggested by Mr. Scheer this morning, go into the question of procedure, methods of carrying on your business, and many of the managerial functions; that even with the provisions that you have mentioned, with the acceptance of regulations and rules published, the question of their full meaning and your knowledge of them, I think, is a little too broad in the field of extending criminal law.

I think it ought to be limited more definitely to specific orders of the commission.

I do not think it is a thing of paramount importance, but I do feel that it would be much fairer if the law were limited to specific rules and regulations.

The CHAIRMAN. Suppose that you have some regulation that provided for a regular practice for the commission and a company violated it; under what method would your client be penalized or the violation be penalized?

Mr. DOUGHERTY. Well, if it were of a serious enough nature, of course, the company could be required to come in and show cause why it should not be compelled to comply, and an order would be entered, and then a penalty follow. It would mean, before these criminal proceedings were started on things that have to do with regulations

and rules, that the company would be brought into the commission and an order issued against it.

The CHAIRMAN. What is the present practice of the commission about publishing its orders and regulations?

Mr. DOUGHERTY. I do not know as to the Federal Power Commission, because I have had no experience with it. Other commissions, some, do publish their rules and regulations in pamphlet form or book form. Others do not publish them. They issue them in very limited numbers, in mimeographed form, and they are available.

Mr. BOREN. Might I ask you a question there? Your contention there is based upon this idea that if some company is violating a rule knowingly or otherwise that the commission then can issue a cease and desist order and that then places them subject to the penalty.

Mr. DOUGHERTY. Yes, sir; that is the way it would work out.

Mr. COLE. Did we not pass a general law requiring all rules and regulations of these departments to be published?

Mr. DOUGHERTY. My understanding is that there was a Federal Register established by Congress in which all rules and regulations of all departments would be published, and that, I think, is kept as a part of the archives. It is, of course, quite a voluminous part of the volumes that are published here.

I have my own personal thoughts to give to you with respect to some of the amendments that have been suggested here. Naturally I do not know what others in the industry think of these various amendments, but I would like to comment on them briefly.

First, Mr. Benton proposed an amendment changing the definition of a natural-gas company, and also rewording to some extent the provision that gives jurisdiction to the Commission. He took out in each instance the words "to the public" and I realize the reasons for it. I would suggest, however, that the committee consider inserting in place of those words which he has taken out, the following: "for ultimate public consumption." So that it is clear even though there your successive sales of gas, all of which are subject to the Commission's jurisdiction, that the gas ultimately must be distributed for general public consumption before there is any right to fix the rates, so that we get no problem of indirect industrial sales that might perchance on their face be under this Commission's jurisdiction.

I have no suggestion concerning temporary rates, particularly, except that they should be put into force, if at all, only under the reservation of correcting any injustices that might occur later.

With that power in the Commission I would suggest that it is definitely unfair to limit this period of 5 months, and I think that you ought not to change it from 5 months to 12 months. That period has to do with putting into effect new rates by the company upon its initiative. It would file its schedule, and the Commission then would start in on a hearing. Five months I think is now in the interstate commerce law and all that the 5 months means is that if within 5 months a hearing has not been completed, the company can put the new increased rate into effect and collect it under bond.

Now, having this in mind that the purpose of a temporary rate is to try to give relief to the public quickly, when the public feels that it needs it, I submit to your fairness that when the company thinks

that it needs it, if it can make certain within a period of 5 months some sort of a showing, it ought not to be put off longer than that, because it has no recourse under this particular section to go back and get reimbursed for that 12 months during which it has been collecting less than a fair and reasonable rate.

So that as a matter of fair play I suggest that the 5 months be left as it is so that other things will be put aside and the company will not be deprived of relief or revenue to which it may be entitled longer than that period which has already been approved by this Congress in the interstate commerce law.

With respect to the amendments that were proposed by Mr. Scheer, the first one is listed as no. 1, to add to section 4 a new subsection taken out of Mr. Crosser's bill.

I commend to your attention the great increase in expense that would result if that is put in. What that section does is this: Says that all companies must file with the Commission true copies of all contracts for lease and royalty agreements of gas lands unless excused by the Commission, for gas, and all contracts for the purchase of gas. Of course, it is quite evident that a great deal of additional expense is going to be put on the taxpayers and the natural-gas companies as a result of this legislation.

Mr. MARTIN. That would take in all of the vast areas of wildcat territory?

Mr. DOUGHERTY. Well, it would, Mr. Martin, unless the commission said we did not have to do it. Now, I submit, that it is not necessary. The only purpose of having information on lease and royalty agreements is when you are determining a rate and when you are going to determine a rate you can have those things brought in. If you are to have them kept up to date like the current inventory, you may be having records maintained here in Washington that will never be taken out of their filing cabinets; will never be brought into use; and, consequently, the very fact of having to prepare them for all of these companies, all of the copies of all of our leases that run for 2, 3, or 4 years, and keeping them on file every time we renew them when there is no rate proceeding involved seems to me an unwise expenditure of time and money.

Mr. MARTIN. It would certainly be a vast volume. That business arises all over the West. The farmers have got their lands under lease from year to year. It would take an archives building to hold them.

Mr. DOUGHERTY. That is right, Mr. Martin. Now, the other two points, that of furnishing the additional contracts, for the purchase of gas and delivery of gas has already been covered by pertinent provisions of the Lea bill. So that the only thing this adds is full information and copies of leases and royalty agreements and purchase contracts. Many companies have as many as 100 or 150 purchase contracts with independents from time to time, and there is no pertinency or value to them as I see it until you get into a rate case and then you can ask that they all be brought in.

Amendment no. 3 suggests the addition of two paragraphs from Mr. Crosser's bill which go pretty far into the matter of manage-

ment of the companies. The first has to do with establishing regulations providing for the maintenance of accuracy and serviceability of all meters used in the control of operation and that I think would not be objectionable, because similar provisions are already in the State laws.

The second one, however, gives the commission power to—

order such changes and improvements in equipment and operating procedure of natural-gas pipe-line companies under its jurisdiction, as it may determine, after investigation and hearing, are necessary to enhance safety in operation and maintain a proper quality of service within the limits of the capacity of the main pipe line and other major facilities installed by the owners.

That, I feel, is going a long way toward controlling the discretion of the people who are responsible to the consumer for getting gas through the line and responsible to the people who are putting their money into the property, see that it is done in an economical way and can be made to produce some returns.

Possibly we might work those things out with the department of the power commission that would be set up. That would depend, of course, upon how much experience those people they will hire have had in the natural-gas business. But I suggest that it will not help in the determination of fair rates; that it will not aid the commission in carrying on its functions to let it take charge of the operating procedure of these companies that are spread all over the United States.

The amendment no. 5, which says that the Commission may after hearing determine the adequacy or inadequacy of gas reserves, presents to my mind some difficulty.

What is adequacy of gas reserves for a company that is serving the city of Cleveland depends upon how many years you want to serve that city with natural gas. A reserve might do one the one hand for a period of 5 years, but if on the other hand you want to serve them for 25 years or 50 years it would not do, and under the law as it now is, the Commission can exclude carrying charges of vast amounts of reserves as charges that have no immediate bearing on the immediate rate.

But I know this, that in financing these pipe lines, the question of the reserves that are behind the line is of immense importance. I have had experience recently in selling bonds to insurance companies on pipe lines, and they required a geological engineering survey of the years that the supply in the field would last and required that the loan be paid off within that time.

Now, if anything would happen to interfere with that company maintaining those reserves, it would seriously impair our ability to pay back that loan. If we ran out of gas before the end of time, or had to go elsewhere for it and pay more money for it, so, I submit to your earnest consideration this question of determining adequacy of reserves. As I say, the law already gives the Commission the right to exclude delay rentals if the Commission feels that the reserve for which the delay rentals are included are too extensive, and I think the Commission would have that right even without this

wording with respect to determining the adequacy of the inadequacy of gas reserves.

I have no other suggestions concerning these amendments.

On section 7 (c), certificate of convenience and necessity: There are a number of statutes of that sort I think in the public interest. Of course, it depends upon the viewpoint from which you are looking at the question. If you live in a city and want natural gas, why, you look at it from the point of view of the consumer. If you are looking at it from a viewpoint of the conservation of gas in a particular area and the utilization of it for a purpose that is economical, then that is a different viewpoint from which to look at it.

The gas business is such that people want to sell all they have all at once. They do not want to keep it for future generations, and frequently it is used for a purpose where its immediate value in terms of dollars and cents is very low, and the question is whether or not some Federal authority should have the right to see that a proper and orderly development of this gas business takes place and that no competing lines come into new territory. This is simply uneconomical, when there is no reason for it, and I certainly would feel that the Federal Power Commission would act with fairness in the consideration of any company where there was a need to serve.

That is all I have to say unless there are some questions.

Mr. BOREN. Mr. Chairman.

The CHAIRMAN. Mr. Boren.

Mr. BOREN. I just want to ask one question on that point. You have stated your opinion about the Commission's attitude. Do you not think though that such provision would handicap the small concern wherein there might be some doubt in the mind of the Commission as to the small concern's ability to deliver immediately?

Mr. DOUGHERTY. Well, these hypothetical questions are difficult to foresee, but if a small group of people who had small resources wanted to build a line into a competing territory, one where there already was service being rendered, what they would do would be to go to somebody who had the money to lend and get a commitment that if they could get a certificate they would finance it, and my judgment is that if it were sound and they could find somebody who thought that that money would be paid back, that they could bring to the Commission that type of a commitment, and the Commission would consider it. I do not believe you would be in a circle, with a thing that you cannot get the money unless you got the order, and you could not get the order unless you got the money.

Mr. BOREN. I am raising that point partly from my personal experience, not in the field of delivering gas to utilities, but in the field of oil operations, dealing as an independent driller and that sort of thing.

In our own State we often run up against what I suppose is a general situation, of what I conceive to be the feeling of the powers that be, that it is unconstitutional to try to do anything the first time.

I am just wondering if there might not be a situation where a new

operator untried in the delivery field of operation might have an opportunity to try to deliver.

Mr. DOUGHERTY. Well your feeling is, I take it, that the Commission would insist on the man showing some experience in the natural-gas business before they felt that he could obtain a certificate?

Mr. BOREN. My humble opinion is that they would say, "What evidence have you to show that you can do this." He has no past history behind him. He would be greatly handicapped.

Mr. DOUGHERTY. Well, that, Mr. Boren, is a matter of opinion. I do not know whether the Commission would view it that way or not. I think that you would have to ask them before you would know what they would say.

Mr. BOREN. Well, certainly, but I have brought that up as one opinion in answer to your opinion that they would be safe along that score. You have explained your opinion.

Mr. DOUGHERTY. That is true. My experience has been that commissions act as they see things fairly, and I have never known them to turn down these applications abitrarily. Mr. Maltbie has cited the situation in the Cabbot Gas Co. case. They granted that permission over the objection of a great many others who were losing the business that they now have in the sale of coal, to the Eastman Kodak Co.

That same company had previously made an application to the Pennsylvania commission to take gas from the same field, in northern Pennsylvania, over to Bradford and serve the industries there, and at a much lower rate than they were being served, and the Pennsylvania commission after a hearing denied that application to the Cabbot Co. Then the Cabbot Co. in turn turned northward and went into New York with the results as you have heard.

I might also say that sometimes that feature in the law reacts against established companies. Now, there is a pipe line which runs up toward Philadelphia that has made contracts with numerous distributing companies, Reading, Allentown, Bethlehem, for the delivery of natural gas, and Governor Earle of Pennsylvania has refused that company a permit to extend its pipe line each time, solely because he wants to protect the anthracite-coal business, and he feels that the situation in that State is such now that no new gas lines should be extended.

Without that Pennsylvania State law, that company could go ahead. Notwithstanding that one instance, I believe over the long period of time the building up of the business so that service will be rendered by companies which can render service efficiently will result, and I believe that the public interest will best be served by such a provision.

It is true in the railroad field. This committee no doubt has passed and sometimes passes on similar sorts of provisions in the interstate-commerce laws. This same provision is in the motor-vehicle law which was passed a year or so ago.

The CHAIRMAN. Mr. Dougherty, you represent a number of companies here?

Mr. DOUGHERTY. Yes, sir.

The CHAIRMAN. Are you at liberty to express an opinion as to the attitude of those companies as to the general purposes of this bill? I am not asking you for an expression covering details, of course, but general purposes.

Mr. DOUGHERTY. Well, we have no objection to the bill. We are not opposing it. We think that generally it is sound regulation. It follows the lines of regulation in many of the States.

Frankly, I think that about the only result that will occur is increased cost both to the Federal Government in the setting up of additions to the Federal Power Commission and to the companies. I do not believe that the expense that is going to be incurred by these companies, that ultimately must be paid by the rate payers and the consumer, is going to find its benefits in as greatly a reduced rate as some of these city officials feel that they will get; but we have no objection to the Federal Government stepping into this field of regulation.

I think that ultimately there will happen in this field what has happened in the railroad business, namely, the Federal Government more and more will take over the fixing of rates, and you will get to the point in 10 or 15 years when there is very little State control over natural-gas rates where the gas is brought in from outside; but we have no objection, and I think the bill is, generally speaking, a proper sort of measure.

I would, in connection with that statement, like to make this reservation. Whether or not any of the companies which I am connected with or any other companies at any time want to contest the constitutionality of any of these provisions I am not now informed, and I do not want any statement that I am making now to be binding on those companies in any future court procedure if they should decide to take it.

I say that, Mr. Chairman, because in the case of the Electric Bond & Share Co. which the S. E. C. brought to compel them to register under the Public Utilities Holding Company Act the fact that their officials did suggest to this committee certain forms of legislation that they thought would be advisable was used by counsel for the Government as a basis for estoppel on their part from questioning the constitutionality of any of the provisions, and I do not want to get into that position by anything that I may have said here.

The CHAIRMAN. Of course, I realize that you cannot make a concrete commitment for all of these companies as to the various provisions of the bill. It is only to get a reflection of the general attitude of the companies as to the measure.

Mr. DOUGHERTY. I think the general attitude of the companies is that it is satisfactory.

Mr. EICHER. You are not afraid that it contains any death sentence?

Mr. DOUGHERTY. No; I do not think so. We will keep on selling gas; whether the customers will get it for any less price than they have been paying in the past, Mr. Eicher, is something that will have to be seen. I doubt that they will, but these municipal authorities

apparently would all feel much happier if the question of rates was passed on in Washington rather than at their State capitals by State commissions; and if they feel happier, I have no reason to deny them that.

The CHAIRMAN. We thank you.

Mr. DOUGHERTY. Thank you.

The CHAIRMAN. And at this place in the record I would like to insert a statistical and economic survey of the Petroleum Economics Division of the Department of the Interior which in effect brings the statistics of the gas industry up to date.

(The document referred to is as follows:)

NATURAL GAS INDUSTRY RECOVERY CONTINUED IN 1935

The marketed production of natural gas, which made a notable recovery in 1934, continued its upward trend in 1935 when the output increased 8 percent over 1934 to a total of 1,916,595,000,000 cubic feet, according to the United States Bureau of Mines, Department of the Interior. Although this gain brought production up to virtually a par with the record of 1929, it was still a little below the record (1,943,421,000,000 cubic feet) of 1930. Imports of natural gas from Canada in 1935 totaled 106,000,000 cubic feet, exports to Canada were 73,000,000 cubic feet and to Mexico 6,727,000,000 cubic feet, making the consumption within the United States 1,909,901,000,000 cubic feet, or 144,913,000,000 cubic feet higher than in 1934. Slightly more than half of this gain is traceable to increased demand by industries other than field use and the manufacture of carbon black with the next largest increase in domestic and commercial consumption.

The downward trend in the value of natural gas at the wells, which began in 1929, was continued in 1935 when producers received an average of 5.8 cents per thousand cubic feet, compared with 6 cents in 1934. Although the 1935 average represents the lowest average return to the producers so far recorded, it should be borne in mind that the decline in this value in recent years has been due chiefly to the increasing proportion of 1 or 2 cent residue gas in Texas. Because of the large volumes involved, this business has undoubtedly been profitable to the producers, mostly as revenue from natural gasoline sales, partly as income from sales of residue gas to carbon black plants and consumers in the field. In other words, most of the natural gas producers are probably receiving a higher average price today than they did five years ago. In 1935, the average price paid by domestic and commercial consumers remained about the same as in 1934, there being a decrease of only 0.1 cent from the previous year. The industrial price, which had declined in 1934, increased slightly in 1935; hence, the total average value at points of consumption rose from 22.3 cents in 1934 to 22.4 cents in 1935.

Of the total consumption in 1935 (1,909,901,000,000 cubic feet), 580,414,000,000 cubic feet (30 percent) was used for field purposes; 313,498,000,000 cubic feet (17 percent) was used by domestic consumers; 100,187,000,000 cubic feet (5 percent) was used by commercial consumers; 241,589,000,000 cubic feet (13 percent) was consumed in carbon black manufacture; 80,175,000,000 cubic feet (4 percent) was consumed at petroleum refineries; 125,239,000,000 cubic feet (7 percent) was consumed at electric public-utility power plants; 26,752,000,000 cubic feet (1 percent) was consumed at portland cement plants, leaving 442,047,000,000 cubic feet (23 percent) consumed for "other" industrial purposes. Compared with 1934, these data reflect chiefly a gain in the relative importance of "other" industrial consumption, that is, the consumption by other than the oil, gas, and cement industries.

The number of domestic and commercial consumers (meters) of natural gas in 1935 was 8,004,000, compared with 7,566,000 in 1934. Included in the 1935 total are 2,346,000 consumers of mixed gas, compared with 2,147,000 in 1934.

The number of gas wells completed rose from 1,373 in 1934 to 1,401 in 1935, the increase resulting primarily from the intensified search for petroleum. The number of producing wells at the close of the year was 53,790, compared with 53,260 for December 31, 1934.

The total interstate and export movement of natural gas increased 13 percent in 1935 to a total of 468,944,000,000 cubic feet. As this gain was relatively higher than the increase in total distribution, it follows that the proportion moved in interstate and foreign commerce increased. This resulted from increased operations in the established systems as no new long lines were built.

Summary of natural-gas statistics, 1935

	Production			Consumption										
				Domestic (including commercial)			Industrial							
							Field (drilling, pumping, operating gasoline plants, etc.)		Manufacture of carbon black		Fuel at petroleum refineries, electric public-utility power plants, and other industrial consumption			
	Millions of cubic feet	Average value at wells per M cubic feet (cents)	Average value at points of consumption per M cubic feet (cents)	Thousands of consumers	Millions of cubic feet	Average value at points of consumption per M cubic feet (cents)	Millions of cubic feet	Value (thousands of dollars)	Millions of cubic feet	Value at points of consumption (thousands of dollars)	Millions of cubic feet			Value at points of consumption (thousands of dollars)[1]
											Petroleum refineries	Electric public-utility power plants	Other industrial	
Alabama				26	1,349	104.7							9,214	1,469
Arkansas	6,167	7.2	22.7	69	7,387	49.4	5,348	490			2,331	1,063	10,347	1,871
California	284,109	7.0	28.7	1,456	69,059	85.8	110,050	7,806			25,010	18,041	61,949	14,450
Colorado	2,843	3.6	22.7	94	4,999	79.6	233	10				406	11,595	1,672
Illinois	1,448	8.4	58.3	1,147	20,810	126.8	1,414	108			168	41	34,886	6,919
Indiana	1,777	21.1	60.8	176	1,988	104.9	100	12				7,561	5,964	2,701
Iowa				111	4,246	99.2						4,502	10,329	2,205
Kansas	57,125	5.1	31.8	203	19,937	52.6	16,394	1,219			1,747	13,457	21,271	5,060
Kentucky	39,738	12.1	44.6	166	9,472	55.8	776	99					5,578	1,519
Louisiana	249,450	3.5	18.6	158	11,013	58.2	15,620	794	54,021	1,277	6,774	21,199	43,307	7,919
Michigan	4,203	10.0	46.9	43	1,610	86.6	1,329	134					1,364	445
Mississippi	9,643	4.4	23.4	34	3,208	55.0	38	4				837	4,682	724
Missouri	609	14.3	46.3	378	12,996	83.5	19	2			2	2,613	17,430	3,677
Montana	19,870	4.0	28.1	34	7,564	41.0	1,432	96			71	604	7,161	1,210
Nebraska				110	4,915	74.6						2,386	7,009	1,626
New Mexico	27,931	1.8	15.4	14	1,661	57.6	12,234	355			72	2,437	2,015	627
New York	8,288	22.8	71.3	396	16,151	82.4	122	27			2,126	1,470	15,836	3,865
Ohio	49,592	16.5	48.8	1,216	65,707	59.4	2,538	439			1	1,874	35,776	12,495
Oklahoma	274,313	2.4	9.7	240	25,136	41.8	192,658	5,909	[2]	[2]	9,453	7,345	24,006	3,857
Pennaylvania	94,464	21.5	41.7	674	40,056	61.1	4,602	1,295			1,411	132	45,400	12,778
South Dakota	8	6.3	37.5	14	1,866	58.7						712	2,078	472
Tennessee				42	3,353	67.6						3,651	2,475	1,116
Texas	642,366	2.1	15.7	568	38,916	67.2	199,876	6,134	180,470	2,368	25,515	31,288	49,632	15,132

West Virginia	115,772	16.9	39.6	181	20,716	36.2	10,409	2,125			599	79	21,960	5,331
Wyoming	26,643	3.1	15.5	19	3,535	38.6	5,141	164	[2]	[2]	4,888	384	4,956	669
Other	236	6.6	49.6	435	16,035	80.0	81	3	7,098	142	7	3,157	19,777	4,069
Total, 1935	1,916,595	5.8	22.4	8,004	413,685	68.5	580,414	27,225	241,589	3,787	80,175	125,239	468,799	113,736
Total, 1934	1,770,721	6.0	22.3	7,566	379,497	68.6	554,542	28,356	229,933	4,016	79,965	127,896	393,155	101,569

[1] Includes value of gas used at petroleum refineries and electric public-utility power plants.
[2] Gas used in manufacture of carbon black included under "Other" for United States total and under "Other industrial" for State total to avoid revealing figures of individual operators.

Interstate transportation and exports of natural gas in 1935

[Prepared under the supervision of G. R. Hopkins, Assistant Chief Economist, Petroleum Economics Division]

State from which gas was transported	State to which gas was transported	M cubic feet
Colorado	Utah	2,344,000
	Wyoming	174,000
Total		2,518,000
Illinois	Indiana	3,000
Indiana	Illinois	34,000
	Kentucky	154,000
Total		188,000
Kansas	Colorado	338,000
	Illinois	2,107,000
	Indiana	855,000
	Iowa	6,980,000
	Minnesota	6,025,000
	Missouri	3,799,000
	Nebraska	7,727,000
	Oklahoma	621,000
	South Dakota	886,000
Total		29,338,000
Kentucky	District of Columbia	2,707,000
	Illinois	110,000
	Indiana	557,000
	Maryland	205,000
	Ohio	8,303,000
	Pennsylvania	11,086,000
	Virginia	343,000
	West Virginia	6,586,000
Total		29,897,000
Louisiana	Alabama	9,996,000
	Arkansas	19,785,000
	Georgia	8,004,000
	Illinois	13,574,000
	Mississippi	3,430,000
	Missouri	10,517,000
	Tennessee	9,479,000
	Texas	27,013,000
Total		101,798,000
Mississippi	Alabama	567,000
	Florida	692,000
	Georgia	78,000
	Louisiana	2,971,000
Total		4,308,000
Missouri	Illinois	163,000
	Indiana	68,000
Total		231,000
Montana	North Dakota	1,382,000
	South Dakota	3,094,000
Total		4,476,000
New Mexico	Arizona	5,603,000
	Colorado	137,000
	Texas	4,811,000
Total		10,551,000
New York	Canada	29,000
	Pennsylvania	1,085,000
Total		1,114,000
Ohio	Indiana	643,000
	Kentucky	4,000
	Pennsylvania	8,000
	West Virginia	188,000
Total		843,000
Oklahoma	Arkansas	524,000
	Iowa	1,000
	Kansas	16,726,000
	Minnesota	2,000
	Missouri	6,342,000
	Nebraska	455,000
	Texas	1,230,000
Total		25,280,000
Pennsylvania	Canada	44,000
	New York	28,531,000
	Ohio	960,000
	West Virginia	1,023,000
Total		30,558,000
Texas	Colorado	16,433,000
	Illinois	39,886,000
	Indiana	11,898,000
	Iowa	12,096,000
	Kansas	28,293,000
	Louisiana	1,311,000
	Mexico	6,727,000
	Minnesota	4,552,000
	Missouri	12,024,000
	Nebraska	5,453,000
	New Mexico	1,039,000
	Oklahoma	8,944,000
	South Dakota	668,000
	Wyoming	399,000
Total		149,723,000
West Virginia	Kentucky	5,827,000
	Maryland	579,000
	Ohio	47,884,000
	Pennsylvania	15,516,000
Total		69,806,000
Wyoming	Montana	1,332,000
	Nebraska	675,000
	Utah	6,305,000
Total		8,312,000
Grand total		468,944,000

The CHAIRMAN. I believe then that that concludes the hearings of the committee on this bill, and the committee will adjourn to meet next Tuesday morning to begin hearings on a bill on aviation.

(Thereupon, at 4:35 p. m., the committee adjourned.)

NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS,
Washington, D. C., March 29, 1937.

Hon. CLARENCE F. LEA,
Chairman, House Interstate and Foreign Commerce Committee,
Washington, D. C.

DEAR SIR: A joint meeting of the executive committee of this association and of the association's committee on legislation was held on March 26, 1937, for the consideration of legislative matters.

The provisions of H. R. 4008 were considered for the purpose of determining whether that bill will provide regulation of the character requested in the resolution heretofore adopted by this association, and presented at the hearing on March 24, 1936. Consideration was also given to the situation existing in Illinois, where the Illinois commission finds itself impeded by injunction proceedings in the Federal courts in its undertaking to discover what it costs the interstate pipe-line company to deliver gas in Illinois, although the commission is seeking that information only for the purpose of determining what the reasonable expenses of the local distributing company ought to be, and what price for gas sold in the Chicago area should be approved by the commission as just and reasonable.

A resolution was unanimously adopted endorsing H. R. 4008, amended as requested on behalf of this association at the hearing on March 24. I attach a copy of the resolution hereto, and ask that it be printed as if presented at the hearing.

Yours very truly,

JOHN E. BENTON,
General Solicitor.

A resolution adopted by the executive committee of the National Association of Railroad and Utilities Commissioners on March 26, 1937

Resolved by the executive committee of the National Association of Railroad and Utilities Commissioners, That the position of said association declared by resolution at its forty-seventh annual convention, in favor of the enactment of Federal legislation providing for the regulation of the interstate transmission and sale of gas at wholesale for resale is hereby reaffirmed; and

Resolved further, That for the purpose of providing such regulations, said association endorses H. R. 4008, an act to regulate the transportation and sale of natural gas in interstate commerce, introduced by Congressman Lea, of California, with the amendments proposed thereto at the hearing before the House Interstate and Foreign Commerce Committee on behalf of the association on March 24, 1937; and

Resolved further, That the necessity for such regulation is increasingly imperative, and that the enactment of H. R. 4008, amended as proposed, at the present session of Congress is earnestly urged on behalf of said association.

NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS,
Washington, D. C., March 29, 1937.

Hon. CLARENCE F. LEA,
Chairman, House Interstate and Foreign Commerce Committee,
Washington, D. C.

DEAR MR. CHAIRMAN: At the hearing on H. R. 4008 on the 25th instant, Mr. Doherty presented certain amendments upon which I then asked leave to comment briefly. Time, however, did not then permit, and you kindly indicated that I might address this letter to you, to be printed as a part of the hearing.

I do not care to comment upon all of Mr. Doherty's amendments. Those which I do comment upon I will set forth as the same were stated upon the typewritten sheet, copies of which were distributed by him prior to his statement, and I will follow each amendment so set forth with my comment thereon.

"Page 2, line 13. Change period to comma and add 'or for resale for industrial use only."

Comment.—It may be that some amendment of section 1 (b) is desirable for the purpose of meeting the suggestion of one member of your committee that the bill is nothing more than legislation providing for regulation of the price of a commodity sold in interstate commerce, no different from a bill which

might empower a commission to fix the price of steel or coal when sold in interstate commerce.

In fact, the bill provides for the regulation of the charge to be made for a utility service. That, I assume, is the sole ground upon which the enactment of the bill would be rested.

While a natural gas company, as defined in the act, is not by the act expressly declared to be a public utility, yet the character of the business which it does makes it a public utility, and section 4 of the act recognizes the character of the service rendered and prescribes that the charges therefor shall be just and reasonable and nondiscriminatory.

The public in the several municipalities of the several States are entitled to look to Government for regulation of the utility services which they require, and of the rates exacted for such services, so that they may be protected against extortionate exactions.

The public of Chicago or of any other municipality receiving natural gas for domestic and industrial uses from Texas or from any States other than those in which the service is consumed, are as much entitled to such full protection as are those living within the States in which the gas is taken from wells. They must, however, look both to the State and to the Federal Governments for this protection.

It was held in *Pennsylvania Gas Company* v. *New York Public Service Commission* (252 U. S. 23), that until Congress occupies the field, the rate to the consumer may be regulated by the authority of the State in which the gas is sold and delivered, even though the gas moves in interstate commerce from another State. In that case, however, the interstate pipe-line company was also the distributing company.

In *Missouri* v. *Kansas Natural Gas Company* (265 U. S. 298), the Court held that intercompany sales in wholesale quantities of gas purchased for resale to consumers were not within the reach of the local authorities of the State where the gas was distributed, but that the Federal authority is paramount, and is the only authority which can regulate.

Inasmuch as the price at which the local distributing company can sell gas is in very large part determined by the price it is required to pay for the same to the interstate pipe-line company, it is obvious that the public cannot be protected from exploitation in the prices charged for natural gas unless Government shall control not only the price of the company which delivers the gas to the consumer, but the prices of all companies which cooperate in bringing the gas from the wells in the State of production to the ultimate consumer, in the State of distribution.

The interstate pipe-line company, selling at wholesale, being beyond the reach of the State where distribution is made, the Federal Government must regulate that company or the spectacle will exist of an industry which serves a large part of the public of the United States with a necessary utility service which is beyond the effective regulation of Government under our Constitution.

While the power of Congress to regulate these intercompany transactions has not been settled by an adjudication in which the wholesale price has been fixed, yet the court has made it clear that it understands that such wholesale transactions are subject to congressional regulation. In *Missouri* v. *Kansas Natural Gas Company*, just cited, the court, as a reason for holding the Federal power over such companies paramount and exclusive, said that a sale at wholesale for resale to the public required "uniformity of regulation even though it be the uniformity of governmental nonaction * * * to preserve equality of opportunity and treatment among the various communities and States concerned."

Again, in *Public Utilities Commission* v. *Attleboro Company* (273 U. S. 83), the court, holding an attempted regulation of a wholesale intercompany rate bya State commission invalid, said:

"The rate is therefore not subject to regulation by either of the two States in the guise of protection to their respective local interests; but, if such regulation is required it can only be attained by the exercise of the power vested in Congress."

In its provisions for regulation of the wholesale rate, H. R. 4008 applies exactly the same principle as the Federal Power Act of 1935, which limits the regulation provided under the Federal act to a "sale of electric energy to any person for resale" (sec. 201 (d) of the Federal Power Act, 1935).

In the place of the amendment proposed we would suggest that section 1 (b) page 2, lines 3–9 to the word "*Provided*" be made to read as follows:

"SEC. 1 (b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale of such natural gas at wholesale

for resale for ultimate public consumption, for domestic, industrial, or any other use, and to natural gas companies engaged in such transportation or sale, but shall not apply to the local distribution of natural gas or the facilities used for such distribution or to the production or gathering of natural gas: * * *

In this connection I point out that the exemption of industrial gas, as I understand your bill, is not for the purpose of exempting industrial gas from all regulation, but for the purpose of avoiding any possible claim that because some industrial user may be taking a very large quantity of gas service to him, on account of its wholesale character, should be considered subject to regulation by the Federal Commission.

Service to an industrial user is just as much a local service, and within State jurisdiction to regulate until Congress acts, as is a sale to a householder for domestic use. Until Congress occupies the field, a sale for industrial use is accordingly subject to State regulation under the rule laid down in *Pennsylvania Gas Company* v. *New York Public Service Company*, above cited.

Sales for industrial use ought not to be exempt from all regulation, for the result may very well be that unjustifiable discrimination will result, and there will be no commission to which complaint may be made. Sales for industrial uses plainly ought to be subject to regulation by the same Commission which regulates sales to other classes of consumers, so that just and reasonable rates, for the several classes of service, properly related to each other, may be established. Under the bill as drawn, all consumer sales are exempt from Federal regulation, and left to State regulation. The language of the suggested amendment just proposed leaves this purpose unaffected, and makes clear that the regulation of intercompany sales is designed for the protection of the consuming public, as a part of the complete regulation of the entire utility service.

Page 8, line 7: Add: "Such order shall not be made until after a finding of the fair value of the property of the natural-gas company used or useful in rendering the service covered by the schedule under consideration."

Comment.—This amendment would be highly objectionable. Without the amendment the Power Commission will make a valuation whenever such valuation shall be necessary to enable the intelligent performance of its duty. The proposed amendment, however, ties the Commission's hands, and compels it to delay any fixing of rates till a valuation has been made, even though the company's books might supply everything the Commission might need to enable a just order to be issued without delay.

In *Clark's Ferry Bridge Company* v. *Pennsylvania Public Service Commission* (291 U. S. 231, 234) the Court said:

"It is not open to question that the reasonable cost of the bridge is good evidence of its value at the time of construction. And we have said that 'such actual cost will continue fairly well to measure the amount to be attributed to the physical elements of the property so long as there is no change in the level of applicable prices.'"

The Commission, under section 5 (a), as it stands, must grant a hearing before it fixes rates; and any order made upon such hearing will be subject to judicial review. That is sufficient to protect the rights of companies. To tie the hands of the Commission, as proposed in the amendment offered, would operate to cause unnecessary delay when expeditious action might lawfully be taken.

Page 10, line 3: Change period to semicolon and add: "*Provided, however,* That facilities may be abandoned without obtaining such permission, approval, or finding, if service is not thereby impaired or if substitute facilities will be installed."

Comment.—This seems to make the lawfulness of the abandonment of facilities depend upon the state of mind of the utility effecting the abandonment. If charged with unlawful abandonment, the utility will say "Substitute facilities will be installed." The amendment places no limit upon the time within which such installation must be made. Enforcement of the prohibition against abandonment will accordingly be difficult if the proposed amendment shall be incorporated. If any alteration of the language of the section as it now stands is thought desirable, the words "or if substitute facilities will be installed", as proposed, should not be incorporated.

Page 13, line 24: Insert after word "property" a comma and the words "subject only to State jurisdiction."

Comment.—This proposed amendment is highly objectionable. It would altogether defeat the purpose of the inclusion of the language proposed to be amended. The concluding sentence of section 9 (a), which Mr. Doherty proposes to amend, is taken from the Federal Power Act, section 302 (a). The purpose of the provision is to prevent public-utility companies from doing ex-

actly what Mr. Doherty in his statement indicated that companies will do if his amendment shall be adopted. The purpose of the provision is to prevent companies from contending that by the passage of Federal legislation State commissions have been deprived of the power to inquire into the true depreciation of utility properties for the service of which the State commissions are fixing rates. A given utility property may be used partly in interstate and partly in intrastate service. In any rate case, whether before a Federal or a State tribunal the Commission fixing the rates involved must have the power to determine the extent of depreciation actually involved.

It was only by determining the actual depreciation accruing in the *Chicago Telephone case* that the Illinois Commission was enabled to make the reduction in rates which was sustained by the United States Supreme Court in *Lindheimer* v. *Illinois Bell Telephone Company* (292 U. S. 150). In that case the telephone company accounted for its excessive depreciation in accordance with an accounting order fixed by the Interstate Commerce Commission, but the actual depreciation incurred was greatly less than the amount claimed. And in that case the United States Supreme Court sustained the order of the Commission.

Yours very truly,

JOHN E. BENTON,
General Solicitor.

WASHINGTON GAS LIGHT CO.,
Washington, D. C., March 29, 1937.

DEAR CONGRESSMAN LEA: There has been introduced by you and is pending before the Interstate and Foreign Commerce Committee (H. R. 4008) a bill "To regulate the transportation and sale of natural gas in interstate commerce, and for other purposes." It is our understanding that the purpose of this bill is to regulate those natural-gas companies now unregulated who are in the business of transporting and selling natural gas for ultimate distribution to the public.

This company is not concerned with the policy of the bill nor its merits. It does desire, however, to point out a possible result affecting this company which undoubtedly was not intended by the framers of the bill.

The Washington Gas Light Co. manufactures gas and it purchases from a natural-gas company; namely, the Atlantic Seaboard Corporation, natural gas which it uses in conjunction with the manufactured gas and which combined product is retailed to consumers in the District of Columbia. There is, however, a territory adjacent to the District of Columbia in both Maryland and Virginia, such as Chevy Chase, Md., Rockville, Rosslyn, Aanacostia, and Alexandria, where consumers use gas. To meet this demand, Maryland and Virginia retail utilities companies purchase at wholesale, gas from the Washington Gas Light Co., and retail to such consumers. It would seem, therefore, that the definition of "natural-gas company" as set forth in section 2, paragraph (5) on page 3, lines 1 to 4, of the bill reading—

"(5) 'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale of such gas for resale to the public whether or not such gas is mixed with artificial gas."

would bring the Washington Gas Light Co. within the category of a natural-gas company where in fact it is merely a purchaser of natural gas for use in manufacturing its own product for sale, the natural gas comprising but approximately one-third of the product, except approximately 1.4 percent of natural gas which is sold from its own pipe line to the Washington Suburban Gas Co., serving Hyattsville and adjoining towns, which gas is used in conjunction with the manufactured gas of the latter company for retail sale.

It should be borne in mind that the Washington Gas Light Co. operates under charter powers granted by acts of Congress and is under the close supervision of a regulatory body created by Congress, the Public Utilities Commission of the District of Columbia.

The powers granted to the Commission and the duty placed upon it by law with respect to rates and charges, schedules, valuation, discrimination, accounts, records, hearings, rates of depreciation, complaints, investigations, etc., are parallel to those enumerated in the proposed bill and in some instances are broader and more exact. (See section 8 of the act approved March 4, 1913, as amended, 37 U. S. Stats., p. 974.) Therefore, if the proposed bill should become law in its present form it would result in this company being under

the jurisdiction of two different Federal supervisory authorities with substantially the same powers, resulting in possible conflicts and possible heavy burdens on the company. It is hoped that since it is apparently not the intention of the bill to create such a situation that the definition may be so amended as to eliminate any question. In this connection, it is suggested that the following amendment be made:

(5) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce or the sale *in interstate commerce* of such gas *or a mixture of such gas* and artificial gas for resale to the public (whether or not such gas is mixed with artificial gas) *except that this term does not mean a "gas utility company."*

(6) A "gas utility company" means any person who owns or operates facilities used for the production, manufacture, transmission, or distribution of natural gas or a mixture of natural and artificial gas and whose principal business is the supplying of services directly to the public for light, heat, or power and such person is subject to the jurisdiction of a State commission [1] although a part of such gas may be sold to any other person for resale provided the principal business of such other person is the supplying of services directly to the public for light, heat, or power, and such person is subject to the jurisdiction of a State commission.

Changing the numbering of the present paragraphs (6), (7), and (8) to (7), (8), and (9) respectively.

The words in italics in (5) are new—the words in parentheses are to be eliminated, all of (6) being new.

Very truly yours,

DARCY L. SPERRY, *President.*

HON. CLARENCE F. LEA,
House of Representatives, Washington, D. C.

CITY OF PORTSMOUTH,
Portsmouth, Ohio, March 27, 1937.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
House of Representatives, Washington, D. C.

GENTLEMEN: When I appeared before your honorable body on March 18, 1937, in support of H. R. 4008, which was referred to your joint committee, I requested permission to file with your committee a written report of matters that I discussed on that day. This permission was granted, and I am forwarding to you a brief outline of the conditions existing in Portsmouth, Ohio, and involving the question of interstate commerce in gas.

In the year of 1932, the city of Portsmouth passed a rate ordinance, fixing the rates to be charged for gas distributed in the city of Portsmouth at 45 cents per thousand, gross, or 40 cents net. The net price was the price which the consumer would pay if bills were paid within a certain time. The Portsmouth Gas Co. appealed from said ordinance to the Utilities Commission of Ohio.

The Portsmouth Gas Co. purchases its gas from the United Fuel Gas Co. under a written contract, paying therefor 37 cents per thousand cubic feet. The United Fuel Gas Co. crosses the Ohio River a short distance east of Portsmouth and again at Portsmouth and claims to be exempt from the jurisdiction of the Ohio Utilities Commission by reason of distributing an interstate commodity from West Virginia and Kentucky into Ohio. This gate rate charge of 37 cents forces the city of Portsmouth to pay to the Portsmouth Gas Co. 85 cents for the first thousand cubic feet of gas and 60 cents for the remainder of gas distributed. Both of these figures are subject to a 5-cent discount if paid within a certain specified time.

Later we had passed by the Legislature of Ohio legislation placing all gas companies supplying natural gas to other gas companies for distribution under the jurisdiction of the Utilities Commission of Ohio. The Utilities Commission of Ohio, under authority given by this legislation, ordered the United Fuel Gas Co. to show the reasonableness of its gate rate at the city of Portsmouth. From this decision the United Fuel Gas Co. appealed to the United States district

[1] The bill defines "State commission" to mean "the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality."

court, where it is now pending, on the question of jurisdiction of the Ohio Utilities Commission over companies claiming to be engaged only in interstate commerce.

The United Fuel Gas Co. distributes to the city of New Boston, which is surrounded by Portsmouth, charging for gas 40 cents per thousand cubic feet. They also distribute at Ironton, 35 miles east, at the same rate, and distribute to cities across the Ohio River—Huntington, Ashland, and Russell—at a rate of 29 or 30 cents.

When the Columbus (Ohio) rate case was heard, the cost of gas at the Ohio River was fixed from 18 to 24 cents per thousand. They obtained jurisdiction over these companies by reason of them being associated with distributing companies and were not dealing at arm's length.

Our present Federal laws exclude pipe lines engaged in interstate commerce carrying gas from the jurisdiction of the Interstate Commerce Commission. This is made specific in legislation or laws governing other utilities engaged in interstate commerce, and if they are not within the jurisdiction of State laws through which they operate, they are not subject to any regulation, either State or National. It is for these reasons that we are heartily in favor of the passage of bill H. R. 4008.

Our objection to (c) of section 7 of this bill was due to the fact that natural-gas companies already established and operating in a certain community could go before the Interstate Commerce Commission in an attempt to keep out any other pipe line when it attempted to secure a certificate of necessity, require the political subdivision that it was serving to engage in what would practically be a rate case before the Commission. This would involve a great deal of time and much delay in securing gas from other companies, and in a measure would eliminate competition.

However, we are very much in need of this bill and will not interpose any further objections, leaving the matter to the good judgment of your committee, and hopeful that the bill will be reported out favorably and passed as soon as possible by Congress.

Thanking you for your consideration when I appeared before the committee, and hoping that this communication explains our position in this matter, I am,

Yours respectfully,

W. L. DICKEY, *Director of Law.*

STATEMENT OF HON. EUGENE I. VAN ANTWERP, MEMBER OF THE COMMON COUNCIL OF THE CITY OF DETROIT AND OF THE CITIES ALLIANCE

Mr. Chairman and gentlemen, I concur in the statements made by the mayor of Cleveland, Mr. Burton, my colleague, Mr. Smith, and the other city officials, who for years have been endeavoring to secure Federal legislation to correct the abuse of pipe-line monopolists.

The staggering difference in gate rates for natural gas in the country plainly indicates that the only solution to the consuming public is through Federal legislation. We favor, of course, the Lee bill with amendments submitted by the Cities' Alliance. These amendments have the approval of the Federal Trade Commission and the Federal Power Commission. We earnestly trust this committee will promptly and favorably report out this bill, so that the local communities, their local representatives, may have the protection that this great industry needs.

EUGENE I. VAN ANTWERP.

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE,
PUBLIC SERVICE COMMISSION,
New York, March 30, 1937.

Hon. CLARENCE F. LEA,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: Enclosed you will please find a copy of the amendments we suggest should be made to H. R. 4008.

I have tried to limit the changes to essential points. I am thoroughly convinced that any attempt to mix Federal and State functions is unwise and will only lead to litigation and confusion. The Federal Commission and the State commissions should stay in their respective spheres.

Very sincerely,

MILO R. MALTBIE, *Chairman.*

PROPOSED AMENDMENTS TO H. R. 4008

Page 2, line 4: After the word "transportation", insert "and sale".

Page 2, lines 4 and 5: Omit the words "to the sale of such natural gas for resale to the public".

Page 3, line 2: After the word "transportation", insert "and sale".

Page 3, line 3: Omit the words "or the sale of such gas for resale to the public".

Comment.—The purpose of these amendments is to provide that this bill relates to interstate commerce in the transportation and sale of natural gas. There are instances where interstate commerce would not include under the interpretations given to that term by the courts, the resale of gas to the public. This bill should not undertake to confer upon any Federal department power which is not conferred upon the Federal Government by the Constitution. Interstate commerce is not synonymous with the sale of gas at wholesale as pointed out by Mr. Hunt in the case of the Syracuse Lighting Co., and there should be no attempt to give the Federal Power Commission control over such business. The language suggested is clearly authorized by the Federal Constitution and the decisions of the courts.

Page 6, line 17: Change "five" to "twelve".

Comment.—A 12-month period may prove to be too short in the case of a long system; 5 months is certainly inadequate.

Page 7, line 20: Omit "(a)".

Page 8, lines 8–14: Omit entire paragraph.

Comment.—This is clearly an attempt to confer upon a Federal department power to do certain things over which the Federal Government has been given no authority whatever by the Federal Constitution. There should be no mixture of power and responsibilities. The theory of the Federal Constitution is clear. It provides that the regulation of interstate commerce is a Federal function and that the regulation of intrastate commerce is a State function. Why attempt to provide even for investigations by one authority into the field reserved for the other? This paragraph will promote litigation, but it will not aid in efficient regulation.

Page 8, line 17: After the word "property", insert "used and useful in whole or in part in interstate commerce".

Page 8, line 24: After the word "property" insert "used and useful in whole or in part in interstate commerce".

Page 8, line 26: After the word "construction", insert "of such property".

Comment.—The purpose of these suggested changes is to clearly give the Federal Power Commission jurisdiction over matters relating to property which is involved in interstate commerce over which the Federal Government has jurisdiction. It does not attempt to confer upon the Federal Commission powers or functions in relation to property which is used exclusively in intrastate commerce. The act as it now reads covers all property whether used in interstate commerce or in intrastate commerce. As in the case of the preceding section, there is an attempt to confer authority which the Congress has no power to confer; and the suggested words cover all property relating to interstate commerce.

Page 9, line 6: After the word "facilities", insert "used in interstate commerce".

Page 9, line 6: Change "its" to "such".

Page 9, lines 9 and 10: Change "its" to "such".

Comment.—This section as it now reads also confers power upon a Federal department which the Congress has no power to confer. The proposed changes clearly limit the powers of the Commission to facilities used in interstate commerce, and the department should have no powers over the facilities not used in interstate commerce.

Page 9, line 20: After the word "abandon", insert "service to any of its customers without the consent of such customer useless".

Page 9, lines 20–23: Omit the words "all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without".

Page 9, line 20: Insert, after the word "commission", "shall".

Page 9, line 24: Change "had and" to "have been".

Comment.—This paragraph as drawn is entirely too broad and impracticable. If a company were using a compressor in aid of transporting gas from one State to another, it could not abandon such station, although providing another at a different point without the consent of the Federal Power Commission. A length of pipe similarly could not be abandoned without such approval. Indeed, the language is so broad that the ordinary things which are done almost daily by public utilities could not be done until approval had been obtained.

Further, there is no public purpose which would be served by such restriction of ordinary procedure. The important thing is that service shall not be abandoned without approval of the commission having jurisdiction, and the proposed amendment protects the consumer and the public in this regard, leaving the companies free to conduct such details of their business as do not interfere with service.

Page 10, lines 6, 10, 15, and 16: Substitute for the word "market", the words "local area".

Page 10, line 17: Omit "market".

Comment.—The word "market" is new to the terminology of regulation. It is indefinite and there is seldom if ever such a thing as a "market" in the natural gas business. "Local area" is a more common term and more easily understood.

Page 11, lines 15–18: Omit "The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited."

Page 11, lines 20–22: Omit "and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof."

Comment.—The bill again attempts in this section to confer authority upon a Federal commission which the Congress has no power to confer. Further, it will produce inevitable conflict between the Federal Power Commission and State commissioners. In the interest of effective regulation and harmony, the words given above should be stricken from the bill.

Page 12, line 25: "and" should be changed to "or."

Page 13, line 4: "and" should be changed to "or."

Comment.—The bill provides for depreciation *and* amortization. Both are not necessary. If adequate provision is made for depreciation, there does not need to be provision for amortization. In order to keep a company in sound financial condition, provision should be made for depreciation in all its forms *or* provision should be made for the amortization of the securities outstanding, but it is not necessary to provide a depreciation reserve for the property and also to amortize the securities outstanding. If the bill remains as it is, it will give an excuse for the companies to claim that they may maintain depreciation and amortization reserves.

If there is any objection to the change of "and" to "or", the phrase "and amortization" should be stricken from the bill.

As stated by Mr. Justice Hughes in a recent opinion, depreciation covers the loss in worth or value (not restored by current repairs) which is due to all causes such as wear and tear, decay, obsolescence, changes in the art and public requirements. Depreciation covers depletion of gas wells and there is in essence no difference between the extraction of gas from a well and the using up of the capacity for rendering service in anything.

Page 12, line 25: After the word "accounts", insert "for their property used in interstate commerce".

Comment.—The purpose of this change is to limit the powers of the Commission on to the property used in interstate commerce. The act is so broad as to cover all property and the Commission cannot have any jurisdiction over property used entirely in intrastate commerce.

Page 13, lines 7–9: Omit the words "Each natural-gas company shall conform its depreciation and amortization accounts to the rates so ascertained, determined, and fixed."

Page 13, line 10: After the word "commission", insert "and not subject to the jurisdiction of any State commission".

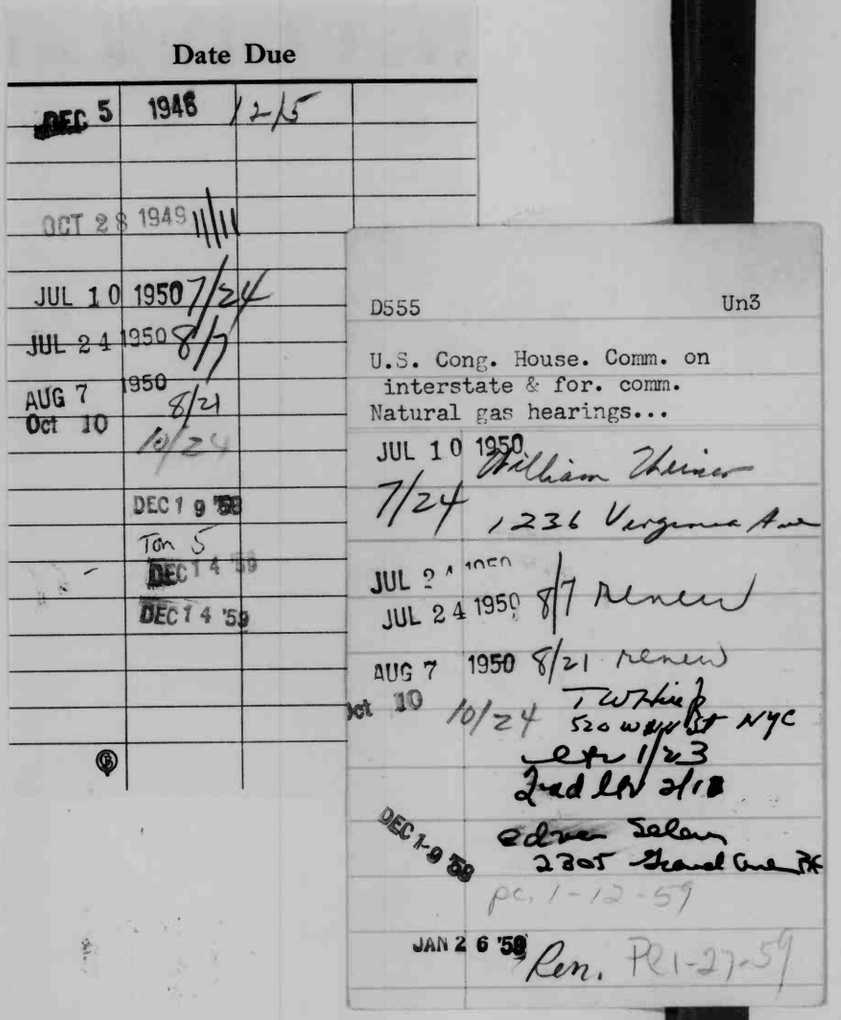
Comment.—The purpose of these changes is to eliminate conflict between the Federal Power Commission and the State commissions. As the bill now reads, jurisdiction has been given to the Federal commission over accounting and depreciation charges which relate to property used in intrastate commerce even though exclusively so used. Of course, the Congress has no power to make such a grant to a Federal commission and it should not undertake to exercise any power that it does not have. If the law remains as it is, there will certainly be litigation and the scope of regulation exercised by the Federal commission should be restricted and not extended beyond the proper sphere.

Attached is a copy of section 114 of article VI of the public-service law of this State, which confers authority to establish temporary rates. As this section was severely attacked in our courts and has been upheld by the court of appeals as a constitutional grant of authority, it would seem wise to adhere to the language used without change except so far as it is absolutely necessary to make it conform to the Federal statute. I do not mean to say that any change is necessary, but I believe it would be unwise to add to or take from a statute that has been upheld by our court of appeals unless very essential.

Temporary rates.—To facilitate prompt action by the Commission in proceedings involving the reasonableness of the rates of any public utility and to avoid delay in any such rate proceeding, the Commission is hereby authorized to require any public-utility company to establish, provide, and maintain continuing property records, including a list or inventory of all the physical property actually used in the public service, and to require any public-utility company to keep its books, accounts, and records in such manner as to show currently the original cost of said physical property and the reserves accumulated to provide for the retirement or replacement of said physical property.

The Commission may, in any such proceeding, brought either on its own motion or upon complaint, upon notice and after hearing, if it be of opinion that the public interest so requires, immediately fix, determine, and prescribe temporary rates to be charged by said utility company pending the final determination of said rate proceeding. Said temporary rates so fixed, determined, and prescribed shall be sufficient to provide a return of not less than 5 percent upon the original cost, less accrued depreciation, of the physical property of said public-utility company used and useful in the public service, and if the duly verified reports of said utility company to the Commission do not show the original cost, less accrued depreciation, of said property, the Commission may estimate said cost less depreciation and fix, determine, and prescribe rates as hereinbefore provided.

Temporary rates so fixed, determined, and prescribed under this section shall be effective until the rates to be charged, received, and collected by said utility company shall finally have been fixed, determined, and prescribed. The Commission is hereby authorized in any proceeding in which temporary rates are fixed, determined, and prescribed under this section, to consider the effect of such rates in fixing, determining, and prescribing rates to be thereafter charged and collected by said public-utility company on final determination of the rate proceeding.



Date Due

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OCT 28 1949 11/11

JUL 10 1950 7/24

JUL 24 1950 8/7

AUG 7 1950 8/21

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JUL 10 1950 William Theiss 7/24 1236 Virginia Ave

JUL 24 1950 8/7 Renew

AUG 7 1950 8/21 Renew

Oct 10 10/24 T. White 520 W 43rd St NYC

Ext 1/23

2nd Ext 2/18

DEC 19 '58 Edwin Salan 2305 Grand Concourse Bx

pc. 1-12-59

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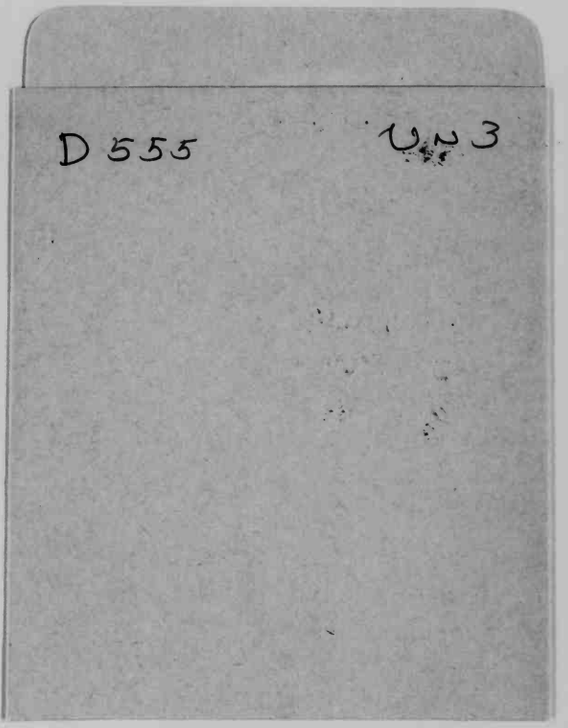

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